



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD

Introduction

This hearing dealt with the tenants' application pursuant to section 38 of the *Residential Tenancy Act* (the Act) for: authorization to obtain a return of all of their security deposit.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant FK (the tenant) appeared on behalf of both tenants. The tenant participated with the assistance of a translator.

The tenant testified that the tenants served the landlord with the dispute resolution package (including all evidence before me) on 9 July 2015 by registered mail. The tenants provided me with a Canada Post customer receipt that showed the same. The landlord admitted service of this package. On the basis of this evidence, I am satisfied that the landlord was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

Preliminary Issue – Scope of Application

The tenants submitted an amended monetary order worksheet. At the hearing, I asked the tenant if the tenants sought to amend their application to include these amounts. The tenant responded that the tenants only sought an order for return of their security deposit.

Residential Tenancy Policy Guideline, "17. Security Deposit and Set off" sets out that:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;
- If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;
- If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;

- If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;
- whether or not the landlord may have a valid monetary claim.

At the hearing I asked the tenant if the tenants were waiving their right to doubling of the deposit. The tenant informed me that the tenants were not.

Preliminary Issue – Adjournment Request

On 30 October 2015, the landlord wrote to the Residential Tenancy Branch requesting an adjournment for the hearing. The landlord did not seek the tenants' consent for an adjournment in advance of appearing at today's hearing despite having ample time to do so.

At the commencement of the hearing, the landlord reiterated his request an adjournment as he was jet lagged. The tenant did not consent to an adjournment.

Residential Tenancy Branch, Rules of Procedure, rule 6.4 sets out the criteria for granting an adjournment:

Without restricting the authority of the arbitrator to consider other factors, the arbitrator must apply the following criteria when considering a party's request for an adjournment of the dispute resolution proceeding:

- (a) the oral or written submissions of the parties;
- (b) whether the purpose for which the adjournment is sought will contribute to the objectives set out in Rule 1;
- (c) whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;
- (d) the degree to which the need for the adjournment arises out the intentional actions or neglect of the party seeking the adjournment; and
- (e) the possible prejudice to each party.

I informed the landlord at the hearing that I would not adjourn the hearing and that the hearing would commence as scheduled. Although I considered all the criteria in 6.4, I declined to adjourn the hearing as the landlord had ample notice of the hearing, the landlord did not seek the tenants' consent in advance of the hearing for the adjournment, the landlord's reason for not wanting to participate was not compelling, and it would unfairly prejudice the tenants to reschedule the hearing.

In any event, the landlord remained on the line and provided his testimony.

Issue(s) to be Decided

Are the tenants entitled to a monetary award for the return of a portion of their security deposit?
Are the tenants entitled to a monetary award equivalent to the amount of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the Act?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around it are set out below.

This tenancy began 1 June 2013 for an initial term of thirteen months. On 7 May 2013, the landlord collected a security deposit in the amount of \$1,150.00.

On 7 May 2013, the parties entered into a written tenancy agreement with an addendum. Clause 8 of the addendum sets out a "releasing cost" for early termination of the fixed-term tenancy. On 30 April 2014, the parties extended the tenancy for a twelve-month period. The extension sets out that the terms of the original agreement apply.

The tenants provided notice to end the tenancy in late March. The tenancy ended no later than 4 May 2015. Monthly rent at the end of the tenancy was \$2,369.00.

A condition inspection was conducted at the beginning of the tenancy. I was provided with a copy of the condition move out inspection report. The parties conducted a condition move out inspection was conducted on 4 May 2015. The tenant testified that this inspection lasted two hours. The parties had a disagreement and the tenant left the condition move out inspection without signing the condition move out inspection report. The tenant testified that the tenants have not yet received a copy of the condition move out inspection report.

The tenants provided their forwarding address to the landlord on 4 May 2015. The tenant testified that the landlord transcribed the tenants' forwarding address onto a piece of paper. The landlord admitted he received this address.

The landlord testified that he brought an account statement to the condition move out inspection of the amounts that were to be withheld from the tenants' security deposit.

On 15 May 2015, the landlord wrote to the tenants explaining the deductions that were to be made from the tenants' security deposit. These deductions included claims for the "releasing cost", rent, and damage to the rental unit.

The parties agree that the tenants' did not sign anything authorizing any deductions at the end of the tenancy. The parties agree that there are no prior orders of the Residential Tenancy Branch in respect of this tenancy. The landlord has not filed an application for dispute resolution.

The landlord submits that the tenants' initials at clause 8 of the addendum constitute an authorization to make deductions from the tenants' security deposit in the event of an early termination of the agreement. The tenants submit that this clause only applied to the first fixed-term tenancy.

The landlord submits that he did not file an application because he was waiting for the tenants to speak with him first. The tenants did not reply and filed this application for dispute resolution. The landlord submits that the security deposit should be retained as the only charges the tenants could dispute are the repair charges.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit. However, pursuant to paragraph 38(4)(a) of the Act, this provision does not apply if, at the end of the tenancy, the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy.

The tenancy ended no later than 4 May 2015; the tenants provided their forwarding address to the landlord no later than 4 May 2015. Pursuant to subsection 38(1) of the Act, the landlord had until 19 May 2015 to return the tenants' security deposit or to apply for dispute resolution to retain the tenants' security deposit. The landlord has not done either of these and continues to hold the tenants' security deposit.

The parties agree that the tenants did not authorize any deductions in writing at the end of the tenancy. The only document the landlord can point to is a document that was signed nearly two years in advance of the tenancy ending. This is not sufficient to permit a deduction from the security deposit pursuant to paragraph 38(4)(a) of the Act.

As there are no outstanding orders of the Residential Tenancy Branch the landlord cannot rely on subsection 38(3) or paragraph 38(4)(b).

The tenants participated in both the condition move in and move out inspections.

The landlord cannot advance argument in respect of damages or losses he incurred at the tenants' application. These submissions would be appropriate in the landlord's own application for compensation for damage or loss. Nothing in this decision prevents the landlord from bringing his own application.

As the landlord did not have any lawful right to retain any amount from the tenants' security deposit, the tenants are entitled to return of the full amount of their security deposit. As the landlord failed to comply with subsection 38(1) of the Act, the tenants are entitled to compensation equivalent to the amount of their security deposit pursuant to subsection 38(6) of the Act.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$2,300.00 under the following terms:

Item	Amount
Return of Security Deposit	\$1,150.00
Subsection 38(6) Compensation	1,150.00
Total Monetary Order	\$2,300.00

The tenants are provided with a monetary order in the above terms and the landlord(s) must be served with this order as soon as possible. Should the landlord(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: December 17, 2015

Residential Tenancy Branch

