



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of double the amount of the security deposit, pursuant to section 38;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord did not attend the hearing, which lasted approximately 32 minutes. The tenants attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions, and to call witnesses.

The tenants confirmed that the landlord was served with the tenants' original application for dispute resolution hearing package on June 25, 2015 and amended application, correcting the spelling of the landlord's surname, on July 28, 2015, both by way of registered mail to the rental unit address. The tenants provided two Canada Post receipts and two tracking numbers to confirm service. The tenants confirmed that they mailed their applications to the landlord at the rental unit address because the landlord was carrying on a business there and he was residing there as of May 29, 2015, the day the tenants moved out. The tenants stated that the landlord ended their tenancy so he could personally occupy the rental unit. The tenants stated that they saw the landlord move into the unit on May 29, 2015 and since then, they have spoken to others in the rental building who have confirmed this. The tenants stated that they have driven by the unit and saw the landlord's personal property on the balcony of the unit. The tenants confirmed that they accepted mail for the landlord's own business at the rental unit while they were living there during their tenancy. Further, the tenants submitted that a letter with their written forwarding address was received and signed for by the landlord on June 12, 2015, at the rental unit address, as evidenced by the Canada Post tracking number submitted by the tenants. Based on the tenants' undisputed testimony, I find

that the landlord was residing at the rental unit and carrying on business there, as per section 89(1)(c) of the *Act*. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenants' original application on June 30, 2015 and amended application on August 2, 2015, five days after each of their registered mailings.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to correct the spelling of the landlord's surname, as I find that the landlord was properly served with the amended application. The correct name is now reflected in the style of cause.

Issues to be Decided

Are the tenants entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Are the tenants entitled to recover the filing fee for this Application from the landlord?

Background and Evidence

The tenants testified that this tenancy began on June 1, 2014 and ended on May 29, 2015. Monthly rent in the amount of \$1,800.00 was payable on the first day of each month. The tenants testified that they paid a security deposit of \$900.00 and a pet damage deposit of \$200.00 and the landlord continues to retain both deposits.

The tenants stated that no move-in or move-out condition reports were completed for this tenancy, as only visual inspections were done. The tenants confirmed that they provided a written forwarding address by way of a letter, which was sent by way of registered mail on June 4, 2015. The tenants provided a copy of this letter and the Canada Post receipt and tracking number to confirm the mailing. The tracking results show that the letter was successfully delivered to and signed for by the landlord on June 12, 2015. In addition to providing the tenants' forwarding address, the letter requests a return of the \$900.00 security deposit, not the pet damage deposit.

The tenants confirmed that they only provided verbal permission to the landlord to keep their pet damage deposit of \$200.00 for carpet cleaning due to pet damage. The tenants testified that they were not seeking the return of the pet damage deposit at this hearing because the landlord was entitled to keep it.

The tenants confirmed that no written permission was given to the landlord to retain any amount from their security deposit. The tenants stated that they were not aware of any

application for dispute resolution filed by the landlord to retain any amount from their security deposit.

The tenants seek the return of double their security deposit, totalling \$1,800.00, due to the landlord's failure to return their deposit in full or make an application for dispute resolution, within 15 days of providing a written forwarding address. The tenants also seek to recover the \$50.00 filing fee paid for their application.

Analysis

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

Section 38 of the *Act* requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I accept the tenants' undisputed evidence at this hearing, as the landlord did not attend. The tenancy ended on May 29, 2015. The tenants provided their written forwarding address on June 4, 2015, by registered mail. The letter was deemed received by the landlord on June 9, 2015, five days after the registered mailing, as per section 90 of the *Act*. The tenants did not give the landlord written permission to retain any amount from their security deposit. The landlord did not return the security deposit to the tenants or make an application for dispute resolution to claim against this security deposit, within 15 days of the deemed receipt of the forwarding address. In any event, the landlord's right to claim against the security deposit for damage is extinguished by sections 24 and 36 of the *Act*, for failure to complete move-in and move-out condition inspection reports, which requires the doubling of the security deposit as per Residential Tenancy Policy Guideline 17.

Over the period of this tenancy, no interest is payable on the landlord's retention of the tenants' security deposit. In accordance with section 38(6)(b) of the *Act*, I find that the

tenants are entitled to receive double the value of their security deposit, totalling \$1,800.00.

As the tenants were successful in their application, I find that they are entitled to recover the \$50.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of \$1,850.00 against the landlord. The tenants are provided with a monetary order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 07, 2015

Residential Tenancy Branch

