



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenants on October 06, 2015. The Tenants filed seeking a Monetary Order for the return of double their security deposit and to recover the cost of their filing fee.

The hearing was conducted via teleconference and was attended by both Landlords and the female Tenant. Each person gave affirmed testimony.

The application listed two applicant Tenants. Therefore, for the remainder of this decision, terms or references to the Tenants importing the singular shall include the plural and vice versa, except where the context indicates otherwise.

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

On February 18, 2016 the Tenants submitted 16 pages of evidence to the Residential Tenancy Branch (RTB). The Tenant affirmed that they served the Landlord with copies of the same documents that they had served the RTB. The Landlords acknowledged receipt of these documents and no issues regarding service or receipt were raised. As such, I accepted the Tenants' submission as evidence for these proceedings.

On February 26, 2016 the Landlords submitted 35 pages of evidence to the RTB. The Landlords affirmed they served the Tenants with copies of the same documents that he had served the RTB. The Tenant acknowledged receipt of these documents and no issues regarding service or receipt were raised. As such, I accepted the Landlords' submission as evidence for these proceedings.

Each person was provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Tenant proven entitlement to monetary compensation for the return of double their security deposit?

Background and Evidence

The Landlords and Tenants entered into a written month to month tenancy agreement that began on approximately September 1, 2009. Rent of \$1,200.00 was payable on the first of each month. On September 1, 2009 the Tenants paid \$600.00 as the security deposit.

On June 28, 2015 the Tenants were served a 2 Month Notice to end tenancy for landlords use listing an effective date of August 31, 2015. The property had sold and the purchaser had requested vacant possession of the rental unit.

The Landlords submitted a copy of the Sellers Statement of Adjustments which stated the completion date of the sale was August 28, 2015 and the possession date of the property was August 31, 2015. The Statement of Adjustments listed a payment of the security deposit of \$600.00.

The female Landlord attended the rental unit on August 31, 2015 to finalize the Tenants' move out. The Landlord testified that during her attendance at the rental unit on August 31, 2015 she informed the Tenant(s) a landlord had 15 days to return a security deposit. They later informed the Tenant via text message that the security deposit went with the sale of the house so she would have to get her security deposit from the new owners.

The Tenant testified she was not given the new owners name or contact information. She asserted she had spoken with the Landlords' realtor in attempts to get the new owners contact information so she could retrieve her security deposit and the realtor refused to give her the information due to privacy issues. She argued she was to be paid her security deposit from her Landlords who were the people she paid it too. She stated she continued to try and retrieve her deposit with no luck so she filed her application for Dispute Resolution.

The Landlords submitted evidence of communications with their lawyer and the purchasers' lawyer attempting to get the Tenants' security deposit returned. On September 30, 2015 they confirmed the security deposit had been returned to their lawyer and was sitting in their lawyer's office in a different city.

The Landlords provided copies of text messages into evidence which were not legible as they were submitted via fax. The Landlords read the text messages they had sent the Tenant into evidence. They stated the message was sent on September 30, 2015 and stated your security deposit is at the law office name and listed the office address and city.

The Landlords testified they contacted their lawyer immediately after they received the Tenants' application for Dispute Resolution as they thought the Tenant had gotten the cheque from their law office. The Landlords confirmed they did not ask their lawyer to mail the cheque to the Tenant and they did not receive a response from the Tenant after they sent her the text on September 30, 2015.

The Tenant stated she did not receive the Landlords' text message that was sent September 30, 2015. She argued she had dropped and broken her phone and could not receive text messages until she replaced her phone.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

In cases where a rental unit is sold and the purchaser becomes an existing tenant's new landlord after completion of the sale, the obligations of the landlord with respect to a security deposit or a pet damage deposit run with the land or reversion, pursuant to section 91 of the *Act*.

In this case I find there was insufficient evidence to prove the purchasers of the property ever intended on becoming the existing Tenants' new landlords. Rather, the evidence supports the purchasers purchased the property on terms they would receive vacant possession.

The above was supported by the fact the Landlord attended the rental unit on August 31, 2015 to conduct the move out with their Tenant. Notwithstanding the completion date of the sale being August 28, 2015, the undeniable evidence was the terms of the sale included transfer of vacant possession to the purchasers effective August 31, 2015. While I appreciate the timing of the completion of sale being 3 days prior to the purchaser getting vacant possession may have complicated this situation; I find transfer of the security deposit through the sale adjustments to the purchaser does not automatically release the Landlords from their obligations under the *Act*, especially in

cases just as these where the purchaser sought vacant possession and was not continuing the tenancy.

I therefore, conclude it was the respondent Landlords to this dispute who were responsible for the return the Tenants' security deposit, in accordance with section 38 of the *Act*.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

Although there was evidence the Landlords communicated with their lawyer to track down the Tenants' security deposit, I find the Landlords did not do their due diligence in making sure the security deposit was returned to the Tenants within the required timeframe. I make this finding in part as the Landlords did not request their lawyer return the security deposit to the Tenants and the Landlords made no effort to pick up the cheque to get it to the Tenants.

Furthermore, even if the Tenant had received the Landlords' September 30, 2015 text message that was submitted into evidence, I do not find that text message released the Landlords from having to return the security deposit to the Tenants. Simply stating the deposit cheque is at a law office in a different city does not meet the burden of proof the security deposit was returned.

In this case the tenancy ended August 31, 2015 and the Tenant provided the Landlords with her forwarding address on September 17, 2015. Therefore, the Landlords were required to return the security deposit and interest to the Tenants or file for dispute resolution against the deposit no later than October 2, 2015. The Landlord's did neither.

I find the Landlords are now subject to section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the \$600.00 security deposit since September 1, 2009.

Based on the above, I find the Tenants have proven the merits of their application and I award them the return of double their security deposit in the amount of **\$1,200.00** (2 x \$600.00).

Section 72(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Tenants have succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the Act.

The Tenants have been issued a Monetary Order for **\$1,250.00** (\$1,200.00 + \$50.00). This Order must be served upon the Landlords and may be enforced through Small Claims Court.

Conclusion

The Tenants were successful with their application and were awarded monetary compensation in the amount of \$1,250.00.

This decision is final, legally binding, and 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: March 17, 2016

Residential Tenancy Branch