



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, O, FF

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of double the amount of their security deposit, pursuant to section 38;
- other unspecified remedies; and
- authorization to recover their filing fee for this application from the landlord, pursuant to section 72.

The landlord did not attend this hearing, which lasted approximately 37 minutes. The tenant DB ("tenant") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant confirmed that she had authority to represent "tenant AR," the other tenant named in this application, as an agent at this hearing.

The tenant testified that the landlord was served with the tenants' dispute resolution hearing notice and application ("Application") on December 8, 2015 by way of registered mail. The tenants provided a Canada Post receipt and tracking number with their Application. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenants' Application on December 13, 2015, five days after its registered mailing.

The tenant testified that the landlord was served with the tenants' written evidence package on May 19, 2016 by way of registered mail. The tenant provided a Canada Post tracking number verbally during the hearing. As this evidence would have been deemed received by the landlord late on May 24, 2016, less than 14 days prior to this hearing, in violation of Rule 3.14 of the Residential Tenancy Branch *Rules of Procedure*,

I advised the tenant that I would not be considering the tenants' written evidence at this hearing or in my decision. The tenants filed their Application on December 7, 2015 and had ample time to submit written evidence prior to the hearing on June 3, 2016.

At the outset of this hearing, the tenant confirmed that the tenants no longer wished to pursue their Application for a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement and "other" unspecified remedies, totalling \$300.00 for "not removing items stored when requested." Accordingly, these portions of the tenants' Application are dismissed without leave to reapply.

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 their filing fee for this Application from the landlord?

Background and Evidence

The tenant testified regarding the following facts. This tenancy began on November 1, 2008 and ended on October 31, 2015. Monthly rent in the amount of \$2,778.72 was payable on the first day of each month. A security deposit of \$1,325.00 was paid by the tenants and the landlord continues to retain this deposit. No move-in or move-out condition reports were completed for this tenancy.

The tenant testified that the landlord was provided with a written forwarding address by way of email on November 5, 2015. The tenant said that she also mailed a letter to the landlord sometime before November 5, 2015, but she could not recall the exact date.

The tenant stated that no written permission was given to the landlord to keep any amount from the tenants' security deposit. The tenant confirmed that no application was received from the landlord by the tenants to retain any amounts from the security deposit.

The tenants seek a return of double the value of their security deposit, totalling \$2,650.00 and to recover the \$50.00 filing fee paid for their Application.

Analysis

While I have turned my mind to the testimony of the tenant, 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 security 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 find that the tenants did not provide a specific date as to when they mailed the letter with the written forwarding address to the landlord. Further, the tenants did not provide a copy of this letter with their Application. They only provided emails sent to the landlord, which I cannot consider at this hearing in any event. The written forwarding address must be served by one of the methods in section 88 of the *Act*, which does not include email. Therefore, the doubling provision of section 38 of the *Act* has not yet been triggered and I find that the tenants are not entitled to the return of double the value of their security deposit.

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 the original amount of their security deposit, totalling \$1,325.00.

As the tenants were only partially successful in their Application, I find that they are not 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 \$1,325.00 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.

The tenants' Application for a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement and "other" unspecified remedies is dismissed without leave to reapply.

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: June 07, 2016

Residential Tenancy Branch