



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O

Introduction

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

- other remedies, identified as authorization to obtain a return of double the amount of the security deposit, pursuant to section 38.

The landlords' agent, JF ("landlord") and one of the two tenants, tenant ER ("tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord confirmed that he had authority to speak on behalf of both landlords named in this application, as an agent at this hearing (collectively "landlords"). The tenant confirmed that he had authority to speak on behalf of "tenant KH," the other tenant named in this application, as an agent at this hearing (collectively "tenants").

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both landlords were duly served with the tenants' application.

The landlord testified that he served the tenants with a copy of the landlords' written evidence package on January 21, 2017, by way of registered mail to a forwarding address provided by the tenants at the end of the tenancy. The landlord provided a Canada Post tracking number verbally during the hearing. He said that he also served it in person to the tenants' nanny, who answered the door at the tenants' personal residence. The tenant said that he did not receive the mail and he has been out of town for some time.

As per section 88(e) of the *Act*, the landlords are permitted to serve their written evidence to an adult who apparently resides with the tenants. The landlord confirmed

that the tenants' nanny was an adult but he did not know whether she resided with the tenants. The tenant confirmed that the nanny does not reside with the tenants. Therefore, I find that the tenants were not served with the landlords' written evidence by way of their nanny.

In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the landlords' written evidence package on January 26, 2017, five days after its registered mailing. As advised to both parties during the hearing, the landlords' written evidence is deemed received late, less than 7 days prior to the hearing and contrary to Rule 3.15 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. Therefore, I advised the landlord that I could not consider the landlords' written evidence at this hearing or in my decision because it was late. However, the landlords' cheque issued to the tenants for \$1,430.00 as well as the email, dated July 25, 2016, between the parties, was contained in the tenants' evidence package which the landlord received, so I could consider those documents. In any event, the remaining 2 invoices are irrelevant to the tenants' application and the printout from the RTB website is not required as it is just for informational purposes.

Issue to be Decided

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

Background and Evidence

Both parties agreed to the following facts. This tenancy began on May 1, 2013 and ended on April 1, 2016. Monthly rent in the amount of \$3,400.00 was payable on the first day of each month. A security deposit of \$1,650.00 was paid by the tenants and the landlords returned \$1,430.00 from the deposit to the tenants in a cheque, dated April 7, 2016, which the tenant said he received shortly thereafter. Two written tenancy agreements were signed by both parties, but only a copy of the most recent one was provided for this hearing.

The tenant said that no move-in condition inspection report was completed for this tenancy, while the landlord said that he does not know. Both parties agreed that no move-out condition inspection report was completed for this tenancy. Both parties agreed that the tenants provided a written forwarding address to the landlords by way of an email, dated April 8, 2016. The tenant provided a copy of this email. The landlord

confirmed that the landlords did not file an application for dispute resolution to retain any amount from the security deposit.

The tenant explained that the landlords did not have written permission to keep any amount from the tenants' security deposit. The landlord said that the tenants agreed in an email, dated April 17, 2016, to a deduction of \$200.00 from their deposit. The email, dated April 17, 2016, from the tenants to the landlords, states: "we expect to see receipts. Otherwise we expect the full amount back." The email following that, on the same date, from the tenants to the landlords, discusses that the tenants "added over \$200.00 of additional shelving...we could call it even then if you think that my cleaning wasn't sufficient. Otherwise I would be happy to come and pick up the shelving this week. Please advise on how you would like to proceed."

The tenants seek a return of double the amount of their security deposit, totalling \$3,300.00 minus the \$1,430.00 that was already returned to them. The tenants also seek interest of \$77.80 on the deposit.

Analysis

Section 38 of the *Act* requires the landlords 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 landlords are 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 landlords have 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 landlords, which remains unpaid at the end of the tenancy (section 38(3)(b)).

This tenancy ended on April 1, 2016. The landlord acknowledged receiving a forwarding address in writing by way of an email, dated April 8, 2016. Although email delivery is not permitted under section 88 of the *Act*, I find that the landlords were sufficiently served, for the purposes of section 71(2)(c) of the *Act*, with the tenants' forwarding address on April 8, 2016. The landlord acknowledged receipt of the email and confirmed that he sent his written evidence for this hearing by registered mail to the tenants at this forwarding address. The landlord also personally gave written evidence to the tenants' nanny at the above address.

The landlords did not return the full deposit or file for dispute resolution within 15 days of receipt of the written forwarding address. I find that the tenants did not give written permission to the landlords to keep any part of their security deposit. I find that there was simply a discussion between the parties to try to resolve the some issues after the tenants vacated the unit, but no agreement was reached. I find that the tenants proposed a settlement by asking the landlords for a response but did not explicitly or specifically state that the landlords could retain \$200.00 from their security deposit. In any event, the tenants could not give written permission for the landlords to keep any amounts from their deposit for damages, because the landlords' right to claim against the deposit for damages was extinguished by sections 24 and 36 of the *Act*, for failure to complete move-in and move-out condition inspection reports for this tenancy.

In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenants are entitled to double the value of the return of their security deposit, totaling \$3,300.00, minus the \$1,430.00 already returned, for a balance of \$1,870.00. Over the period of this tenancy, no interest is payable on the landlords' retention of the security deposit.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of \$1,870.00 against the landlord(s). The tenant(s) 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 01, 2017

Residential Tenancy Branch