



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD; MNDC; FF

Introduction

This is the Tenant's Application for Dispute Resolution seeking return of the security deposit; compensation for damage or loss under the Act, regulation or tenancy agreement; and for recovery of the cost of the filing fee.

The Tenant signed into the teleconference, but the Landlords did not. The teleconference remained open for 20 minutes.

The Tenant gave affirmed testimony at the Hearing. She testified that she served both of the Landlords with the Notice of Hearing documents and copies of her documentary evidence, by registered mail, sent September 2, 2016. The Tenant provided the receipt and tracking numbers for the registered mail.

The Tenant stated that the registered mail package was returned, "refused by the recipient".

Section 89 of the Act provides for service by registered mail. Section 90 of the Act deems service in this manner to be effective 5 days after mailing the documents.

Where a document is served by Registered Mail, the refusal of the party to accept or pick up the Registered Mail, does not override the deeming provision. Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

I find that the Landlords were duly served with the Notice of Hearing documents. The Hearing continued in their absence.

Issue(s) to be Decided

Is the Tenant entitled to return of the security deposit and compensation pursuant to Sections 38 and 67 of the Act?

Background and Evidence

The Tenant gave the following testimony:

- This tenancy was to begin on June 1, 2016, but the rental unit was not ready for occupancy on June 1, 2016. Floors were not finished and the bathroom had to be installed, so the Tenant moved into the rental unit on June 4, 2016. The Tenant had paid full rent for June, 2016.
- Monthly rent was \$880.00, due on the first day of each month. In addition, the Tenant was responsible for 25% of the utilities.
- The Tenant paid a security deposit in the amount of \$440.00.
- The tenancy agreement was a fixed term lease, set to expire on May 31, 2016; however, the Tenant gave 45 days' notice to end the tenancy on July 31, 2016, because of noise issues in the rental unit.
- The Landlords were able to re-rent the rental unit, and the new occupant moved in on July 31, 2016. Therefore, the Landlords did not lose any rental income.
- There was no Condition Inspection Report completed at the beginning or the end of the tenancy.
- The Tenant gave the Landlords her forwarding address in writing, by registered mail sent on August 2, 2016. The Tenant provided a copy of the letter advising of her forwarding address; asking for return of her 6 postdated cheques; and asking for copies of the final utility bills for which she was 25% responsible.
- The Landlord sent the Tenant a letter dated August 30, 2016, enclosing a cheque in the amount of \$452.48, for "damage deposit cheque plus \$86.79 credit for 3 days rent minus \$74.31 for your portion of utility bills"). The Landlord did not return the Tenant's post-dated cheques or provide the Tenant with copies of the utility bills. The Tenant received this letter on September 9, 2016 and has cashed the cheque.
- The Tenant incurred costs of \$5.00 per cheque in bank fees to cancel the 6 post-dated cheques that the Landlord did not return.

The Tenant seeks a monetary award, calculated as follows:

Cost to cancel 6 cheques	\$30.00
Double the amount of the security deposit	\$880.00
Compensation for three days rent in June	\$85.00

Cost of filing fee	<u>\$100.00</u>
subtotal	\$1,095.00
Less cheque cashed	<u>-\$452.48</u>
TOTAL	\$642.52

Analysis

I accept the Tenant's undisputed affirmed oral testimony and documentary evidence provided in its entirety.

Section 67 of the Act provides that if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Schedule 5(4) of the Regulation provides that a landlord must return to the tenant on or before the last day of the tenancy any post-dated cheques for rent that remain in the possession of the landlord.

In this case, I find that the Landlords did not return the Tenant's post-dated cheques, contrary to the regulations, and that the Tenant is entitled to recover the cost of the bank charges for canceling the cheques, in the amount of \$30.00.

Section 38 of the Act requires a landlord to handle the security deposit as follows:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

...

- (6) If a landlord does not comply with subsection (1), the landlord
- (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

[Reproduced as written.]

** I note that paragraph 4 of the tenancy agreement used by the parties expresses this portion of the Act as well.

I further note that the Landlords extinguished the right to claim against the security deposit or pet damage deposit by failing to perform a written condition inspection report at the start of the tenancy. This extinguishment is explained in section 24(2) as follows:

- 24** (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
- (a) does not comply with section 23 (3) [2 opportunities for inspection]
 - (b) having complied with section 23 (3), does not participate on either occasion, or
 - (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

[Reproduced as written.]

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlords are in breach of Section 38 of the Act.

There was no evidence to show that the Tenant had agreed, in writing, that the Landlords could retain any portion of the security deposit.

There was also no evidence to show that the Landlords had applied for arbitration, within 15 days of the end of the tenancy or receipt of the Tenant's forwarding address, to retain a portion of the security deposit, as required under Section 38.

Furthermore, by failing to perform incoming or outgoing Condition Inspection Reports in accordance with the Act and regulation, the Landlords extinguished the right to claim against the security deposit for damages, pursuant to Sections 24(2) and 36(2) of the Act.

Pursuant to the provisions of Section 38 of the Act, I find that the Landlord must pay double the amount of the security deposit to the Tenant.

The Tenant has been successful in her Application and I find that she is entitled to recover the cost of the filing fee from the Landlords.

I make no finding with respect to the amount the Tenant owes the Landlords for utilities, if any, as this is the Tenant's Application.

Conclusion

I hereby provide the Tenant with a Monetary Order in the above terms, in the amount of \$642.53, for service upon the Landlords. Should the Landlords fail to comply with this Order, it may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties, except as otherwise provided under the Act, 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 02, 2017

Residential Tenancy Branch