



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

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

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38; and
- 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 15 minutes. One of the co-tenants attended the hearing, assisted by counsel, and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Evidence was primarily given by tenants' counsel (the "tenant").

The tenant testified that he served the tenants' application for dispute resolution dated January 16, 2017 on the landlord by registered mail on January 30, 2017. The tenant provided a Canada Post tracking number as evidence of service. I find that the landlord was deemed served with the tenant's application and evidence in accordance with sections 88, 89 and 90 of the *Act* on February 4, 2017, five days after mailing.

Issue(s) to be Decided

Is the tenant 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*?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy agreement arose from a sale of the rental property. The tenants sold the rental property to the landlord. The tenants lived in the rental property prior to the sale and the parties agreed that the tenants would continue to reside for a fixed period of three months under a tenancy agreement with the landlord/purchaser. The fixed term tenancy began on September 2, 2016 and ended December 2, 2016. Monthly rent was set at \$2,500.00. The tenants paid the landlord \$7,500.00, the amount of this three month rent, on September 2, 2016 by deducting the amount from the sale price of the rental property. Similarly, a security deposit of \$1,250.00 and a pet damage deposit of \$625.00 were paid to the landlord by adjusting the sale price of the property. The tenant submitted into written evidence a Statement of Adjustments showing the credits to the landlord/purchaser.

A condition inspection report was not prepared at the start or end of the tenancy. The tenant sent the landlord their forwarding address in writing by a letter from tenants' counsel dated November 30, 2016. The letter was sent to the landlord's agent at the address for service provided on the tenancy agreement. A copy of the letter was submitted into written evidence. The tenant testified that the landlord's agent subsequently informed the tenant they are no longer acting as agent but no alternate contact address was provided. The tenant testified that they have not given written authorization that the landlord may retain the security deposit.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy and or upon receipt of the tenant's 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 tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a).

I find that the tenant provided written notice of the forwarding address by the letter of November 30, 2016. I accept the tenants' evidence that the landlord has not provided an alternate address for service. I find that in the absence of any prior communication from the landlord informing the tenants of a change in the address for service the tenants served their notice of forwarding address in accordance with section 88 of the *Act*.

I accept the evidence of the tenants that the landlord failed to return the security deposit to the tenant within 15 days of November 30, 2016, the time frame granted under section 38 (1)(c) of the *Act* nor did the landlord make an application claiming against the security deposit during that period.

The tenant testified that no condition inspection report was prepared at the start of the tenancy. Section 24 of the *Act* outlines the consequences if reporting requirements are not met. The section reads in part:

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

...

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Accordingly, I also find that the landlord has extinguished any right to claim against the security deposit by failing to prepare a condition inspection report at the start of the tenancy. While the

tenants owned the property and were occupying the rental unit prior to the start of the tenancy the landlord was still required to complete a condition inspection report in accordance with the *Act* to maintain their right to claim against the security deposit.

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days. I accept the tenants' evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenants are entitled to an \$3,750.00 Monetary Order, double the value of the security deposit and pet damage deposit paid for this tenancy. No interest is payable over this period.

As the tenants were successful in their application, they are entitled to recovery of the \$100.00 filing fee.

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$3,850.00 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: March 13, 2017

Residential Tenancy Branch