



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DON WON APT. LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

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 and pet damage 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 this hearing, which lasted approximately 15 minutes. Both tenants attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant JC (the "tenant") primarily spoke on behalf of both co-tenants.

The tenant testified that the tenants' application for dispute resolution dated March 13, 2017 and evidentiary materials were sent to the landlord at the service address provided on the tenancy agreement, on that same date by registered mail. The tenants provided a Canada Post tracking number as evidence of service. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenants' application package on March 18, 2017, five days after its mailing.

Issue(s) 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 the filing fee for this application from the landlord?

Background and Evidence

The tenant provided undisputed testimony regarding the following facts. This periodic tenancy started on March 1, 2011 and ended January 31, 2017. The monthly rent at the end of the tenancy was \$1,122.00. The tenants provided a security deposit in the amount of \$525.00 and a pet damage deposit in the amount of \$500.00 at the start of the tenancy and these are still held by the landlord. No condition inspection report was prepared at either the start or end of the tenancy.

The tenant testified that he provided his forwarding address to the building manager, an agent of the landlord, by text message on January 30, 2017. He subsequently hand delivered a copy of his forwarding address to the business address of the landlord provided on the tenancy agreement on February 20, 2017. The tenant said that he has not provided any written authorization that the landlord may retain the security deposit and pet damage deposit.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit and pet damage 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 or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit and pet damage deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

I find that the tenants duly served the landlord with written notice of the forwarding address on February 20, 2017 by hand delivering it to the business address of the landlord, pursuant to section 88 of the *Act*.

I accept the evidence of the tenants that the landlord failed to return the full security deposit and pet damage deposit to the tenants within 15 days of February 20, 2017, the time frame granted under section 38 (1)(c) of the *Act*. The landlord did not make an application claiming against the security deposit and pet damage deposit during that period.

The tenants 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 and pet damage deposit by failing to prepare a condition inspection report at the start of the tenancy.

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenants' security deposit and pet damage 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 a \$2,050.00 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 \$2,150.00 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: May 10, 2017

Residential Tenancy Branch