



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution (the "application") under the *Residential Tenancy Act* (the "*Act*"). The tenants applied for monetary order for the return of double their security deposit and to recover the cost of the filing fee.

The tenants and the landlord attended the teleconference hearing. The parties gave affirmed testimony, were provided the opportunity to present evidence orally and in documentary form prior to the hearing, and make submissions during the hearing.

The landlord confirmed that he received and had the opportunity to review the documentary evidence served on him by the tenants. The landlord also confirmed that he did not serve documentary evidence on the tenants in response to the tenants' application.

Issue to be Decided

- Are the tenants entitled to the return of double their security deposit under section 38 of the *Act*?

Background and Evidence

The parties agreed that the tenants paid a \$950.00 security deposit at the start of the tenancy on or about September 1, 2015. The landlord confirmed that he received the tenants' written forwarding address after the tenants vacated the rental unit on January 1, 2016 and before January 13, 2016 when the landlord previously applied for compensation from the tenants but did not specifically apply to claim against the tenants' security deposit. That previous file number is referenced on the cover page of this decision for ease of reference and was dismissed in full by an arbitrator as the

landlord applicant failed to attend for the hearing while the respondent tenants did attend. The landlord confirmed that he did not apply for a Review Consideration of that decision and as a result, that decision stands.

Based on the above, there is no dispute that the landlord was served with the tenants' written forwarding address between January 1, 2016 and January 13, 2016, although the landlord could not recall the specific date. The landlord also confirmed that he did not apply to claim against the tenants' security deposit although he stated he thought that by applying for compensation that he was also applying against the tenants' security deposit. The landlord confirmed that he continues to hold the tenants' security deposit of \$950.00. In addition, the landlord confirmed that the tenants did not authorize the landlord to retain any portion of the tenants' security deposit.

Analysis

Based on the above, the documentary evidence and testimony before me and on a balance of probabilities, I find that the landlord has breached of section 38 of the *Act*.

Firstly, the landlord confirmed that he received the tenants' written forwarding address between January 1, 2016 and January 13, 2016. Secondly, I find the landlord did not file a claim against the tenants' security deposit as he did not attend the previous hearing and based on the previous decision, also did not specifically claim against the tenants' security deposit. This is supported by the landlord's previous monetary claim being dismissed without leave to reapply as he failed to attend the hearing while the tenants did attend the hearing. While the landlord stated he thought he was claiming against the tenants' security deposit by filing a monetary claim I disagree. The landlord must indicate in his application that he is claiming against the tenants' security deposit and attend the hearing, neither of which I find the landlord provided evidence to support at this hearing. Finally, the landlord confirmed that the tenants did not agree in writing to any deductions from the \$950.00 security deposit.

Section 38 of the *Act* applies and states:

Return of security deposit and pet damage deposit

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.

[My emphasis added]

Based on the above, I find the landlord breached section 38 of the *Act* by failing to apply for dispute resolution claiming against the tenants' security deposit or return the tenants' security deposit in full within 15 days after January 13, 2016, the date I will use in the interests of fairness as the landlord claims he was unsure on the date he received the tenants' written forwarding address. As described above, the date of January 13, 2016 was the date the landlord filed an application which was dismissed when he did not attend the hearing and the tenants did attend; and to which the landlord failed to claim against the tenants' security deposit.

The security deposit is held in trust for the tenants by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. The landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as an order from an arbitrator, or the written agreement of the tenants. In the matter before me, I find the landlord did not have any authority under the *Act* to keep any portion of the security deposit and did not return the security deposit to the tenant within 15 days of January 13, 2016 as required by the *Act*.

Section 38(6) of the *Act* provides that if a landlord does not comply with section 38(1), the landlord must pay the tenants **double** the amount of the security deposit. The legislation does not provide any flexibility on this issue. As a result, I grant the tenants

\$1,900.00 pursuant to section 67 of the *Act* which is double the original security deposit amount of \$950.00.

As the tenants' application was successful, and pursuant to section 72 of the *Act*, I grant the tenants the recovery of the cost of the filing fee in the amount of **\$100.00**.

Based on the above and pursuant to section 67 of the *Act*, I grant the tenants a total monetary order in the amount of **\$2,000.00** which is comprised of \$1,900.00 for double the original \$950.00 security deposit, plus the \$100 filing fee.

I ORDER the landlord to comply with section 38 of the *Act* in the future.

Conclusion

The tenants' application is fully successful.

The landlord has breached section 38 of the *Act* and has been ordered to comply with 38 of the *Act* in the future.

The tenants have been granted a monetary order in the amount of \$2,000.00 comprised of double the security deposit of \$950.00 plus the recovery of the cost of the \$100.00 filing fee. The monetary order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless 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: May 12, 2017

Residential Tenancy Branch