



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD OLC 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 their security deposit pursuant to section 38; an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord/respondent did not attend this hearing, although I waited until 1:40 p.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 1:30 p.m. The tenant/applicant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions regarding his application.

The tenant testified that, through an agent within Canada, the tenant served the landlord with the Application for Dispute Resolution package including the Notice of this Hearing by Canada Post registered mail on July 20, 2017. The landlord submitted a copy of the receipt and tracking information as well as a message from the agent in Canada who mailed the materials to confirm that they had been sent. The tenant's online materials with Canada Post confirm that the package was received by the landlord. Therefore, I find that the tenant sufficiently served the landlord with the notice of this hearing pursuant to section 89 and 90 of the Act.

Issue(s) to be Decided

Are the tenants entitled to the return of their security deposit?

Are the tenants entitled to an order that the landlord comply with the *Act* or to be compensated in an amount equivalent to the security deposit as a result of the landlord's failure to comply with the *Act*?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy began on March 1, 2017 with a variable monthly rental amount, depending on the season but ranging from \$3000.00 to \$3900.00 payable on the first of each month. The tenants paid a \$1500.00 security deposit to the landlord prior to the outset of this tenancy. The tenant testified that, by mutual agreement, the tenants vacated the rental unit as of April 14, 2017. The tenant testified that they had agreed that the landlord could retain a portion of the security deposit. The landlord was to return the balance remaining (\$852.00) to the tenants. The tenants applied because the landlord has not returned their portion of the security deposit and they seek its return as well as their filing fee and any other compensation they may be entitled to recover.

Tenant MQ attended this hearing on behalf of both tenants. He explained the tenancy ended on April 14, 2017 by mutual agreement. He testified that, while he and his wife agreed that the landlord was entitled to keep a portion of their security deposit, the landlord was required to return \$852.00 to the tenants. The tenant testified that the landlord had been provided with their address in writing both at the outset of the tenancy (they would be returning to their overseas home), that their regular address was provided on the residential tenancy agreement and that he informed the landlord at the end of the tenancy (April 14, 2017) to return the security deposit to the same address.

The tenants submitted an email chain that included discussion between the landlord and tenants regarding the tenancy, the end of tenancy and the return of a portion of the security deposit. The documents submitted by the tenants support the tenant's testimony at this hearing that the landlord agreed to return \$852.00 at the end of the tenancy. The tenants' documentary evidence included a copy of the electronic money transfer sent to the tenants and their email to the landlord that, because they live in another country, they were unable to accept it. The tenants advised the landlord via email, provided as evidence for this hearing, that they were unable to access the electronic funds. An email response from the landlord states that he is currently travelling but that he will contact the tenants on his return. That email was dated May 27, 2017 and the tenant testified that he has no further contact from the landlord. The tenant provided evidence that he also sent emails to the landlord's partner. That person responded that she would try to get the landlord to respond however the tenant testified that the landlord has still not responded.

The landlord did not apply to retain the tenants' security deposits.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. In this case, I accept the undisputed testimony of the tenant that the landlord was informed of the tenants' forwarding address in writing at the end of the tenancy – the same date that the tenants vacated the rental unit: April 14, 2017. This testimony is also supported by the documentary evidence submitted by the tenants for this hearing. The landlord had 15 days after April 14, 2017 to take one of the actions outlined above.

Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant." The tenant testified that he and his wife did agree to allow the landlord to retain a portion of their security deposit: an amount totaling \$648.00. The landlord agreed to return \$852.00. I accept the tenant's testimony regarding this agreement as his testimony was sworn and undisputed and as there is evidence, in both the email exchange and the attempted electronic money transfer that the landlord was authorized to keep a portion of the tenants' security deposit at the end of this tenancy. Therefore, section 38(4)(a) of the *Act* applies to the tenants' security deposit.

The tenants sought the return of their security deposit. The landlord did not apply to the Residential Tenancy Branch to retain all or a portion of the tenants' deposit within 15 days of receiving the tenants' forwarding address. I find there is sufficient proof that the landlord was deemed served with the tenants' application package including the Notice of Hearing document in accordance with the *Act*. I accept the undisputed testimony of the tenant supported by the documentary evidence that show; he provided his forwarding address, the landlord attempted to electronically transfer \$852.00 to the tenants and that, as of the date of this hearing, the tenants' agreed-upon portion of the

security deposit has not been returned. I find that, while the landlord did send one electronic money transfer, based on the provision of both email and the tenants' Application for Dispute Resolution package, the landlord knew or ought to have known that the tenants had been unable to receive the return of their deposit. Therefore, in all of these circumstances, I find that the tenants are entitled to a monetary order including \$852.00 for the return of the agreed-upon portion of their security deposit.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;*
- *If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*
- *If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;*
- *If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

Based on the undisputed evidence of the tenant before me, I find that the landlord has neither applied for dispute resolution nor returned the tenants' portion of the security deposit within the required 15 days. At this hearing, the tenant gave testimony that neither he nor his wife had waived their right to the entirety of their security deposit or an amount equivalent to their deposit pursuant to section 38 of the *Act* owing 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 therefore entitled to a total monetary order amounting to double the value of their security deposit amount agreed-upon for return with any interest calculated on the original amount only. No interest is payable for this period.

Having been successful in this application, I find further that the tenants are also entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I issue a monetary Order in favour of the tenants as follows:

Item	Amount
Return of Security Deposits (portion)	\$852.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	852.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$1804.00

The tenants are provided with this 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: January 16, 2018

Residential Tenancy Branch