



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EAST 9TH PROJECT 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* ("Act") for:

- authorization to obtain a return of double the amount of the security deposit plus interest, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two individual and company landlords did not attend this hearing, which lasted approximately 35 minutes. The two tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenants testified that the landlords were served with the tenants' application for dispute resolution hearing package on September 1, 2017, by way of registered mail. The tenants provided a Canada Post tracking number verbally during the hearing as well as a copy of the receipt with their application. In accordance with sections 89 and 90 of the *Act*, I find that both landlords were deemed served with the tenants' application on September 6, 2017, five days after its registered mailing to the address provided by the individual landlord to the tenants in order to serve both him and the landlord company.

At the outset of the hearing, the tenants confirmed that they were seeking \$12.55 in registered mail costs for sending their application to the landlords. I informed them that the only hearing-related costs that they could recover under section 72 of the *Act*, was

for the application filing fee. Therefore, I notified them that this portion of their application was dismissed without leave to reapply.

Issues to be Decided

Are the tenants entitled to a monetary award equivalent to double the value of the security deposit plus interest as a result of the landlords' 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 landlords?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the tenants, not all details of the submissions and arguments are reproduced here. The principal aspects of the tenants' claims and my findings are set out below.

The tenants testified regarding the following facts. This tenancy began on August 7, 2007 and ended on July 31, 2017. Monthly rent in the amount of \$1,700.00 was payable on the first day of each month. A security deposit of \$850.00 was paid by the tenants and the landlords continue to retain this deposit. A written tenancy agreement was signed by both parties and a copy was provided for this hearing.

The tenants testified that no move-in or move-out condition inspection reports were completed for this tenancy. They stated that they provided a written forwarding address to the landlords by way of a letter that was sent by regular mail on June 23, 2017. They claimed that they also sent two emails to the landlords with their forwarding address again on June 28, 2017 and July 31, 2017. The tenants provided copies of this letter and two emails.

The tenants explained that the landlords did not have written permission to keep any amount from their security deposit. They stated that they did not receive an application for dispute resolution from the landlords to retain any amount from their security deposit.

The tenants seek a return of double the amount of their security deposit of \$850.00, totalling \$1,700.00, plus \$18.81 interest on the original deposit. They also seek to recover the \$100.00 filing fee paid for this application.

Analysis

Section 38 of the *Act* requires the landlords to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlords are 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 landlords have obtained the tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlords, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings based on the undisputed testimony of the tenants. The tenancy ended on July 31, 2017. The tenants provided a written forwarding address by way of a letter that was mailed to the landlords on June 23, 2017. The tenants did not give the landlords written permission to retain any amount from their security deposit. The landlords did not return the deposit or make an application for dispute resolution to claim against the deposit.

In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenants are entitled to receive double the value of their security deposit of \$850.00, totalling \$1,700.00.

Over the period of this tenancy, \$18.81 is payable as interest on the landlords' retention of the tenants' security deposit from July 14, 2007, the date indicated on the tenancy agreement as to when the deposit was due, until the date of this decision, March 12, 2018. As per Residential Tenancy Policy Guideline 17, this interest is calculated only on the original security deposit amount of \$850.00 and this amount is not doubled.

As the tenants were successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the landlords.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of \$1,818.81 against the landlords. The tenants are provided with a monetary order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords 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.

The tenants' application to recover \$12.55 in registered mail costs is dismissed without leave to reapply.

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 12, 2018

Residential Tenancy Branch