



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

On September 20, 2018, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) requesting the return of their security deposit, and to recover the cost of the filing fee. The matter was set for a conference call.

Both the Tenants and Landlord attended the hearing and were each affirmed to be truthful in their testimony. The Tenants and Landlord were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Tenants testified that they received the Landlord’s documentary evidence that I have before me. The Landlord testified that she did not receive the Tenants documentary evidence that I have before me. The Tenants provided a Canada Post Registered mail receipt for the service of their documentary evidence to the Landlord. During the hearing, I reviewed the delivery tracking report from Canada Post and am satisfied that the Tenants evidence was served on the Landlord in accordance with the *Act*. Under section 90 of the *Act* the Landlord was deemed served with this evidence five days after mailing. I note that refusal or neglect to accept registered mail is not a ground for Review Consideration under the *Act*.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Has there been a breach of Section 38 of the Act by the Landlord?
- Are the Tenants entitled to recover the cost of the filing fee?

Background and Evidence

The undisputed testimony of both parties confirmed that the tenancy began on March 27, 2017 as a month to month tenancy. Rent in the amount of \$1,400.00 was due each month. The Tenants paid the Landlord a \$700.00 security deposit and a \$550.00 pet damage deposit. The Tenants issued a one month notice to end tenancy, dated July 31,

2017 to the Landlord ending their tenancy on August 31, 2017. This notice included the Tenants forwarding address and requested the return of the security deposit and pet damage deposit (the deposit) in full. Both parties agreed that there was no written tenancy agreement, no move-in inspection or move-out inspection and that the Tenants moved out on August 31, 2017.

The Landlord testified that she sent a cheque for \$1,200.00, via Canada Post Registered mail, on September 15, 2017. The Landlord confirmed that she did initially withhold \$50.00 from the security deposit, due to some damage to the rental unit and extra cleaning that was required after the Tenants moved out, and that she did not submit an Application for Dispute Resolution to claim against the deposit. The Landlord testified that on September 20, 2017 she realised that she should not have kept the \$50.00 and took immediately steps to have the withheld funds returned to the Tenants. To accomplish this the Landlord had a friend of hers who lived in their area personally return the \$50.00 to the Tenants. The Landlord testified that her friend personally delivered \$50.00 cash to the Tenants and provided a written receipt signed by her friend stating that the \$50.00 cash had been delivered on September 20, 2017.

The Tenants testified that they received a cheque from the Landlord for \$1,200.00 via Canada Post on September 20, 2017 and that they had also received the \$50.00 cash personally delivered by the friend of the Landlord on September 20, 2017. The Tenants also testified that they had not given permission to the Landlord to keep any amount from their deposit.

Analysis

Section 38(1) of the *Act* gives the Landlord 15 days from the later of the day the tenancy ends or the date the Landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposit, or repay the security deposit to the tenant.

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.

In the case before me, it is undisputed that the tenancy ended and that the Landlord was provided the forwarding address in writing, before the Tenants vacated the rental unit on August 31, 2017. Accordingly, the Landlord had until September 15, 2017 to comply with section 38(1) of the *Act* by either repaying the deposit in full to the Tenants or submitting an Application for Dispute resolution to claim against it. The Landlord in this case did not file an Application for Dispute Resolution to claim against the deposit. As such the critical issue to determine is, did the Landlord repay the deposit within the required time limit prescribed by the *Act*.

The Tenant's testimony focused on the date they received the repayment cheque from the Landlord. However, it is important to point out that section 38(1) does not use the word "receive" in setting out the landlord's time limit. The *Act* uses the word "repay" or "file" which do not carry the same meaning as "receive". The *Act* further stipulates how the repayment is to be accomplished in section 38(8).

38 (8) For the purposes of subsection (1) (c), the landlord must repay a deposit

- (a) in the same way as a document may be served under section 88 (c), (d) or (f) [*service of documents*],
- (b) by giving the deposit personally to the tenant, or
- (c) by using any form of electronic
 - (i) payment to the tenant, or
 - (ii) transfer of funds to the tenant.

In order to determine if the Landlord has returned the security deposit to the Tenants according to the time limit set out in the *Act* I must consider the manner in which the repayments were made and the dates the repayments were initiated. Mailing the deposit to the tenant's forwarding address is a method of service provided for under section 88(d) of the *Act* and in mailing a refund cheque to the tenant at their provided forwarding address the landlord complies with a method of repayment provided under the section 38(8). Therefore, when a security deposit is repaid by mail, the landlord is considered to have repaid the security deposit on the date it is mailed, postage date, not

the date of delivery. Additionally, personally returning the deposit to the Tenants is also an accepted method of repayment under section 38(8), however, with personal service the deposit is both repaid and received on the same day.

Based on the evidence before me, the testimony of the Tenants and the Landlord, and the balance of probabilities I find that \$1,200.00 of the \$1,250.00 deposit was repaid on September 15, 2017, the date the check had been placed in the mail by the Landlord, which was within the 15-day time limit after the date the tenancy ended. However, the Landlord admitted to initially withholding \$50.00 of the security deposit without the Tenants written consent or filing an Application for Dispute Resolution claiming against the deposit. The repayment of that \$50.00 was accomplished by an agent of the Landlord personally repaying it to the Tenants on September 20, 2017, which was outside of the 15-day time limit after the date the tenancy ended. Therefore, I find that the Landlord has not complied with the provisions set out in section 38(1) of the *Act*, as she did not return the security deposit in full within the legislated time limit, nor did she submit an Application for Dispute Resolution within that time limit as required by the *Act*.

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. If the Landlord and the Tenant are unable to agree to the repayment of the security deposit or to deductions to be made to it, the Landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later. It is not enough that the Landlord thinks they are entitled to keep even a small portion the deposit, based on unproven claims.

Section 38 (6) of the *Act* goes on to state that if the Landlord does not comply with the requirement to return or apply to retain the deposit within the 15 days, the Landlord must pay the tenant double the security deposit.

Return of security deposit and pet damage deposit

- 38 (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.

Therefore, I find that pursuant to section 38(6) of the Act the Tenants have successfully proven their entitled to the return of double the security deposit, due to their full deposit not repaid within the legislated time limit.

I find for the Tenants, in the amount of \$1,250.00, granting a monetary order for the return of double the security deposit, minus the funds they have already received.

Security Deposit		\$700.00
Pet Damage Deposit		\$550.00
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Total Deposits Taken		\$1,250.00
Deposit Doubled		\$2,500.00
Returned Amount - By Mail	Cheque	-\$1,200.00
Returned Amount - In Person	Cash	-\$50.00
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Owing		\$1,250.00

As the Tenants were successful in this application, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application

Conclusion

I find that the Landlord has breached section 38 of the *Act*, as they failed to repay the security deposit as required by the *Act*.

I find for the Tenants pursuant to sections 38 and 72 of the Act. I grant the Tenants a Monetary Order in the amount of \$1,350.00 for the return of double the security deposit, less the amounts repaid by the Landlord and for the recovery of the filing fee for this application. 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: April 18, 2018

Residential Tenancy Branch