



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- the return of their security deposit and an amount equivalent to their security deposit pursuant to section 38 of the *Act*; and
- the recovery of the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 10:00 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 9:30 a.m. The tenant P.D. (herein referred to as the tenant) attended the hearing and spoke on behalf of the tenants. The tenant was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant provided sworn testimony that he sent a copy of the Notice of Dispute Resolution Proceeding package with his submitted evidence to the landlord by Canada Post Xpresspost on April 27, 2018. The tenant testified that he added the service requiring signature upon proof of delivery. This testimony was supported by documentary evidence submitted by the tenant, including a Canada Post Xpresspost mail receipt with tracking number, and a tracking report showing that the package was delivered on April 30, 2018 and signed for by "X.T". Therefore, I find that the landlord was served with the notice of this hearing in accordance with section 89 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 additional amount equivalent to their security deposit for the landlord's failure to comply with the *Act*?

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

Background and Evidence

The tenant provided the undisputed testimony that the six-month fixed-term tenancy began on February 19, 2016 and continued until the tenants vacated the rental unit on May 1, 2016 due to a substantial water leak issue which affected the unit. The monthly rent was \$1,000.00 payable on the first day of each month. The tenants paid a security deposit of \$500.00 at the commencement of the tenancy. The landlord continues to hold the security deposit.

A previous Residential Tenancy Branch decision (file number provided on the cover sheet of this decision) was rendered on October 25, 2016, in which the arbitrator dismissed the landlord's application for a monetary claim against the tenants' security deposit. The arbitrator noted that "the landlord's obligations regarding return upon [sic] the security deposit once they receive the tenant's forwarding address remain intact" and that the tenants would be at liberty to apply for double the deposit should the landlord fail to return the deposit.

The tenant stated that the landlord had their forwarding address as of May 4, 2016 as the tenant had written it on the condition inspection report that was completed, and signed, by both the tenant and the landlord upon move-out. The tenant submitted this report into evidence as proof that he has provided the landlord with a forwarding address in writing. In addition, the tenant noted that landlord was in possession of his forwarding address at the time of the October 25, 2016 hearing as the landlord had sent the tenants the Notice of Dispute Resolution Proceeding to that address.

The tenant testified that although he has since moved from the original forwarding address, he has continued to diligently check with the current occupants of that previous address for any mail addressed to him, and he has also taken the additional step of sending in writing, by mail, to the landlord his current address. He has also tried to communicate with the landlord by email but has received no response.

The tenant further confirmed that at no time did he agree in writing that the landlord could make any deductions from the security deposit. The move-out condition inspection report includes the notation “all good” and has no notations to indicate any damages or agreement for a deduction from the security deposit.

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.

In this case, the tenant testified that he provided the landlord with his forwarding address on May 4, 2016. The landlord originally filed an Application for Dispute Resolution on May 11, 2016 to retain the security deposit. The landlord filed his application within the timelines provided by section 38(1) of the *Act*. That matter was decided by a Residential Tenancy Branch (RTB) arbitration decision on October 25, 2016, dismissing the landlord’s claim and directing the landlord to return the security deposit to the tenants and that the tenants provide the landlord their forwarding address in writing. I find that the landlord was already in possession of the tenants’ forwarding address as it had been provided on the move-out condition inspection report and the landlord had served the tenants the hearing package information for the October 25, 2016 hearing to that address.

Given that the landlord filed his Application for Dispute Resolution to retain the tenants’ security deposit within the timelines provided by section 38(1) of the *Act*, I find that the tenants are entitled to the return of their security deposit, but not the additional compensation provided under section 38(6) of the *Act*. I make this finding notwithstanding the comments in the October 25, 2016 decision regarding the tenants’ liberty to apply for double the deposit.

Based on the undisputed testimony provided by the tenant at the hearing, I find on a balance of probabilities, that the landlord was in possession of the tenants’ forwarding address, that the tenants never received their security deposit, and that the tenants are entitled to the return of their \$500.00 security deposit, plus any interest payable. No interest is payable for this period.

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

Conclusion

I issue a Monetary Order in the amount of \$600.00 in favour of the tenants as follows:

Item	Amount
Return of security deposit withheld by landlord	\$500.00
Recovery of filing fee for this Application	100.00
Total Monetary Order	\$600.00

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: June 11, 2018

Residential Tenancy Branch