



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened in response to an application from the tenants pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of the security, pursuant to section 38 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Tenants M.D. and I.O. appeared at the hearing on behalf of the tenants, while the landlords' agent, L.L. attended for the landlords.

The landlord confirmed receipt of the tenants' application for dispute after it was given to her in person on December 7, 2017. Pursuant to section 89 of the *Act*, the landlord is found to have been duly served with the tenants' application.

Issue(s) to be Decided

Are the tenants entitled to a return of the security deposit? If so, should it be doubled?

Can the tenants recover the filing fee?

Background and Evidence

The tenants explained that this tenancy began on September 1, 2016 and ended on April 30, 2017. Rent was \$2,350.00 per month, and a security deposit of \$1,175.00 paid at the outset of the tenancy continues to be held by the landlord.

The tenants said that a copy of their forwarding address was provided to the landlord's agent, L.L. by way of text message on June 11, 2017, and again on June 24, 2017. As part of the tenants' evidentiary package, a copy of their text message correspondence with the landlord was included. A messaged dated June 11, 2017 purports to show the

tenants providing their forwarding address to the landlord at 2:30 P.M. The landlord responded to this message at 2:39 P.M. saying, "It is all explained with your check."

The landlord disputed having received these messages. The landlord said she had cheque in her office awaiting the tenants' pick up. The landlord said this cheque dated June 6, 2017 was in the amount of \$580.44. The landlord explained several items were left in the rental unit following the conclusion of the tenancy, a fair amount of cleaning was required to bring the rental unit to an acceptable standard, and the carpets were not cleaned following the end of tenancy. The landlord said that she deducted \$594.56 from the tenants' deposit in reflection of the expenses the landlord incurred hiring professional cleaners.

Both parties confirmed that no condition inspection of the property was performed following the conclusion of the tenancy and the tenants stated that they did not provide the landlord with permission to withhold any part of their security deposit.

Analysis

Section 38 of the *Act* requires the landlord to either return a tenant's security or pet deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the *later* of the end of a tenancy and upon receipt of a tenant's forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security or pet deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a). A landlord may also under section 38(3)(b), retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator.

The question therefore is whether the landlord was sufficiently served with the tenants' forwarding address. I note that the tenants provided their forwarding address to the landlord via text message on June 11, 2017, instead of through one of the acceptable methods for providing written notice as set out in section 88 of the *Act*. Section 71(2)(c) of the *Act* allows me to determine if a document not served in accordance with section 88 of the *Act* is "sufficiently given or served for purposes of this *Act*." A review of the evidence provided at the hearing by tenants shows the landlord replied to the tenants' text messages nine minutes after the forwarding address was sent to her via text. Furthermore, the message sent to the tenants by the landlord in response to their message containing their forwarding address makes reference to "their check" indicating an awareness of receipt of the address. I therefore find that landlord was

sufficiently served with the tenants' forwarding address on June 11, 2017 pursuant to section 71(2)(c) of the *Act*.

No evidence was produced at the hearing that the landlord applied for dispute resolution within 15 days of receiving a copy of the tenants' forwarding address on June 11, 2017, or following the conclusion of the tenancy on April 30, 2017. If the landlord had such grave concerns arising from the tenancy, the landlord should have applied for dispute resolution to retain the security deposit or for a monetary award related to the cleaning expenses.

Pursuant to section 38 of the *Act*, I find that the tenants are entitled to a monetary award of \$2,350.00 representing a doubling of the tenants' deposit which the landlord continues to hold.

As the tenants were successful in their application, they may recover the \$100.00 filing fee associated with this application.

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$2,450.00 against the landlord. This amount includes a return of the security deposit with the penalty provision included and a return of the filing fee. The tenants are provided with a Monetary 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: July 17, 2018

Residential Tenancy Branch