



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:

- authorization to obtain a return of double their security deposit pursuant to section 38; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Tenant JO (the tenant) attended the hearing and gave sworn testimony that the other tenant had authorized the tenant to act on her behalf. The landlord's spouse testified that her husband, Landlord DD, had expected to be able to call into this teleconference hearing, but had been unable to do so, as he was airborne at the time of this hearing. The landlord's spouse testified that they had retained a property manager to look after this tenancy as their agent throughout most of their interaction with the tenants during the course of this tenancy. Although the landlord's spouse was familiar with the details of this tenancy that were in dispute, she did not have specifics relating to the service of documents and could not comment on some of the tenant's sworn testimony and written evidence.

As the landlord's spouse had been provided with the call-in details for this hearing, she said that she could not dispute the tenant's sworn testimony supported by written evidence that the tenants sent the landlord a copy of the tenant's dispute resolution hearing package and written evidence package by registered mail on May 25, 2018. The tenant also provided a copy of the Canada Post Online Tracking System document which confirmed that the landlord had signed for receipt of this material on May 28, 2018. I find that the landlord was deemed served with this package in accordance with

sections 88, 89 and 90 of the *Act* on May 30, 2018, the fifth day after the registered mailing.

The landlord's spouse said that she assumed that her husband had sent copies of the landlord's written evidence to the tenants prior to this hearing. This material was comprised of a one-page document, which described various concerns related to the tenancy and the damage the landlord claimed had arisen as a result of the tenants' actions during this tenancy. The tenant gave sworn testimony that the tenants had not received any written evidence from the landlord. At the hearing, I advised the parties that without specific evidence from the landlord or his spouse as to how this evidence was provided to the tenants, I could not take this written evidence into consideration as there was no proof that it had been served in accordance with section 88 of the *Act*. I also note that the landlord's written evidence regarding alleged damage to the rental unit would have had no bearing on the tenants' application to obtain a return of double their security deposit.

Both parties confirmed that this application from the tenants was the only application currently before the Residential Tenancy Branch (the RTB).

Issues(s) to be Decided

Are the tenants entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlord's 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 landlord?

Background and Evidence

This tenancy began as a one-year fixed term tenancy on October 15, 2014. When the initial term ended, the tenancy continued on a month-to-month basis until April 15, 2018, by which the tenancy had ended. Monthly rent was initially set at \$3,300.00, payable in advance on the 15th of each month. By the end of this tenancy, the parties agreed that the monthly rent had increased somewhat, to approximately \$3,422.00.

Both parties agreed that the tenants paid a \$1,650.00 security deposit when this tenancy began on October 15, 2014. The landlord's spouse said that the landlord had paid \$1,400.00 to the tenants during the course of this tenancy. The tenant testified that this was a payment to reimburse the tenants for losses that they experienced when there was food spoilage when a fridge failed. The tenant maintained that this payment

was separate from their security deposit and happened about two years ago. The landlord's spouse confirmed that this payment to the tenants was not a return of any portion of the tenants' security deposit at the end of this tenancy.

The tenant gave undisputed sworn testimony that the tenants handed the keys to the landlord's property manager/agent on April 10, 2018. At that time, the tenant testified that Tenant VAH gave the landlord's property manager their forwarding address. The tenants also entered into written evidence copies of May 2018 exchanges with the landlord after the end of this tenancy, in which the tenants requested a return of their security deposit to the tenants at the address provided by the tenants. The landlord's spouse did not dispute the tenant's allegation that the landlord had refused to return the security deposit because the landlord maintained that there had been significant damage to the rental unit during this tenancy, totalling \$18,885.00.

The landlord's spouse acknowledged that the landlord had not obtained any written authorization to retain any portion of the tenants' security deposit, nor had the landlord returned any portion of that deposit. The landlord's spouse confirmed that the landlord had not applied to the RTB to retain any portion of the tenants' security deposit. The landlord's spouse testified that there was significant damage to this rental unit, damage which far exceeded the retained value of the security deposit. The landlord's spouse was uncertain as to whether the tenants' forwarding address had been provided to their property manager. The landlord's spouse did not dispute the tenants' written evidence in which the tenants maintained that the landlord had been sent the tenants' forwarding address in a series of emails.

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 deposit 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 an additional 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. 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."

I find that the tenant gave the best evidence with respect to the dates when the forwarding address was provided to the landlord in person to the landlord's property manager and by email. The sworn testimony of the landlord's spouse reiterated the information contained in the record of the email interactions between the tenants and the landlord. I conclude from this evidence that the landlord refused to return the security deposit because of the landlord's incorrect understanding that the landlord could make the arbitrary decision to withhold the return of that deposit as compensation for damage that occurred during the course of this tenancy. In this case, I find that the landlord has not returned the tenants' security deposit in full within 15 days of receipt of the tenants' forwarding address.

There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenants' security deposit. I find that the \$1,400.00 payment from the landlord to the tenants at an earlier stage of this tenancy was totally separate from the tenants' security deposit. The tenant gave undisputed sworn testimony that the landlord has not obtained their written authorization at the end of the tenancy to retain any portion of the tenants' security deposit.

The following provisions of Policy Guideline 17 of the RTB'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.*

In accordance with section 38 of the *Act*, I find that the tenants are therefore entitled to a monetary order amounting to double the original security deposit with interest calculated on the original amount only. No interest is payable over this period.

As the tenants have been successful in their application, I find that the tenants are also entitled to recover their filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenants' favour under the following terms which allows the tenants to recover their original security deposit plus a monetary award equivalent to the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*:

Item	Amount
Return of Security Deposit	\$1,650.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	1,650.00
Plus Filing Fee	100.00
Total Monetary Order	\$3,400.00

The tenants are provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 09, 2018

Residential Tenancy Branch