



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This is an application by the tenants filed under the Residential Tenancy Act (the “Act”) for a monetary order for return of double the security deposit (the “Deposit”).

The tenants attended the hearing. As the landlords did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The tenants testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on December 4, 2017. The tenants stated the packages were returned unclaimed. Refusal or neglect to pick up the packages does not override the deemed service provision of the Act.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the landlords have been duly served in accordance with the Act.

The audit notes indicated that the landlords contact the Residential Tenancy Branch on June 28, 2018, as the landlords had received the auto generated email sent by the Residential Tenancy Branch of an evidence reminder. At that time the landlords were given hearing and dispute details.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

Are the tenants entitled to a monetary order for return of double the Deposit(s)?

Background and Evidence

The tenancy began on August 1, 2014. Rent in the amount of \$1,600.00 was payable on the first of each month. A security deposit of \$800.00 was paid by the tenants.

The tenants testified that they vacated the premises on November 30, 2015. The tenants stated that they provided the landlord with a written notice of the forwarding address on December 17, 2015, sent by registered mail. A Canada post tracking number was provided. The tenants stated they did not authorize the landlord to retain any amount from the Deposit and there were no orders made that authorized the landlord to retain any amount from the Deposit.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Return of security deposit and pet damage deposit is defined in Part 2 of the Act.

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.

...

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) 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, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(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.

In this case, there was no evidence that the landlords had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address, which was given on December 17, 2015, and deemed served five days later.

I accept the undisputed testimony of the tenants that they did not agree in writing that the landlord may retain any amount from the security deposit or pet deposit.

I find the landlords have breached 38(1) of the Act.

The security deposit is held in trust for the tenants by the landlord. 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.

The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator. Here the landlords did not have any authority under the Act to keep any portion of the Deposit. Therefore, I find that the landlords were not entitled to retain any portion of the Deposit.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Therefore, I must order, pursuant to section 38 of the Act, that the landlords pay the tenants the sum of \$1,600.00, comprised of double security deposit (\$800.00) on the original amounts held.

The tenants are given a formal monetary order pursuant to 67 of the Act, in the above terms and the landlords must be served with a copy of this order as soon as possible. Should the landlords fail to comply with this order, the order may be filed in the small claims division of the Provincial Court and enforced as an order of that court. The **landlords are cautioned** that costs of such enforcement are recoverable from the landlords.

Conclusion

The tenants' application for return of double the Deposit is granted. The tenants are granted a monetary order in the above noted amount.

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 12, 2018

Residential Tenancy Branch

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