



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNSD

Introduction

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

- the return of 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*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present, service of documents was confirmed. The landlord testified that she was in receipt of the tenants' Notice of Dispute Resolution Proceeding package application and evidentiary materials, which had been sent via Canada Post registered mail. Based on the undisputed testimony of the parties, I find that the landlord was served with the documents for this hearing in accordance with section 89 of the *Act*.

Preliminary Issue – Amendment to the Tenants' Application for Dispute Resolution

At the outset of the hearing, I confirmed with the landlord that her first name was misspelled on the tenants' application. Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the tenants' application to correct the spelling of the landlord's first name.

Preliminary Issue – Incomplete Address for Service Provided by the Applicants

The landlord stated that she served the tenants with her evidence to the “Address for Service of Documents” the tenants provided on their Application for Dispute Resolution. The landlord testified that the package was returned to her due to “incomplete address”. I reviewed with the tenants the address provided on their application and confirmed that they had failed to include their unit number as part of their address on their application. The landlord had uploaded her evidence to the Residential Tenancy Branch dispute website. I asked the tenants if they were aware of the nature of the landlord’s evidence. The tenants confirmed that to their knowledge the landlord had submitted evidence in support of her claims that the tenants had caused damage to the rental unit especially in relation to the flooring, including photos taken before and after the tenants’ tenancy. I find that the landlord’s evidence is allowed for the following reasons:

- the tenants were aware of the nature of the landlord’s evidence;
- the tenants erred in failing to provide the landlord with a complete address for the service of documents;
- the landlord’s evidence was not relevant to making a determination in the tenants’ claim for the return of the security deposit, and therefore it was not prejudicial to the tenants to consider the landlord’s evidence; and
- the landlord is at liberty to file her own claim for damages against the tenants, for which the submitted evidence would have relevance.

For clarity, I have noted on the cover sheet of this decision the forwarding address provided by the tenants in their evidence materials, which is their complete address for service as confirmed by the tenants in the hearing.

Issue(s) to be Decided

Are the tenants entitled to the return of the security deposit? If so, are the tenants entitled to an additional monetary award equivalent to the value of the security deposit because of the landlord’s failure to comply with section 38 of the Act?

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

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

No written tenancy agreement was signed by the parties, however both parties agreed to the following understanding of the terms of the tenancy agreement:

- This month to month tenancy began May 1, 2016.
- Monthly rent of \$800.00 was payable on the first day of the month.
- A security deposit of \$800.00 was paid by the tenants at the beginning of the tenancy and continues to be held by the landlord.
- The tenancy ended on November 30, 2017.

I explained to the parties, for their future reference, that the *Act* prohibits a landlord from requiring a security deposit greater than one-half of one month's rent.

No condition inspection was conducted on move-in and no condition inspection report was provided to the tenants after moving into the rental unit.

On December 3, 2017, a condition inspection walk-through was conducted at move-out, with participation of both parties.

On December 5, 2017, the tenants testified that they personally served their forwarding address in writing to an employee of the landlord at the landlord's place of business. The tenants submitted into documentary evidence a photograph of the signed written document containing their forwarding address. The landlord confirmed that her place of business was the address she provided to the tenants as her address for service. The landlord confirmed that she received the tenants' written forwarding address several days later, on approximately December 8, 2017.

On December 10, 2017, the landlord sent the tenants an email regarding cleaning deficiencies and damages to the rental unit, but the landlord confirmed that she is not aware if her email was compliant with the Residential Tenancy Branch Regulations which set out the requirements for the standard information that must be included in a condition inspection report. The landlord's email was not submitted into documentary evidence.

Both parties confirmed that the tenants had not provided the landlord with written authorization to retain or make any deductions from the security deposit.

The landlord confirmed that she had not filed an application for dispute resolution to retain the security deposit.

The landlord claimed that the tenants caused damage to the rental unit which required cleaning, painting and the replacement of flooring.

Analysis

The *Act* contains comprehensive provisions on dealing with security deposits. Under section 38 of the *Act*, the landlord is required to handle the security deposit as follows:

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.

...

(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.

At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it due to cleaning deficiencies or damages caused by the tenant. 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.

In this matter, the landlord had not applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the tenants, to retain a portion of the security deposit, as required under section 38 of the *Act*.

There was also no evidence to show that the tenants had agreed, in writing, that the landlord could retain any portion of the security deposit.

I further note that the landlord extinguished the right to claim against the security deposit by failing to perform a written condition inspection report at the start of the tenancy. This extinguishment is explained in section 24(2) as follows:

- 24** (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
- (a) does not comply with section 23 (3) [*2 opportunities for inspection*]
 - (b) having complied with section 23 (3), does not participate on either occasion, or
 - (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

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, or with the written agreement of the tenant. In this matter, I find that the landlord did not have any authority under the *Act* or agreement from the tenants to keep any portion of the security deposit.

Based on the above legislative provisions, the testimony and evidence, and on a balance of probabilities, I find that the landlord failed to address the security deposit in compliance with the *Act*. As such, in accordance with section 38(6) of the *Act*, I find that the tenant is therefore entitled to a monetary award equivalent to the value of double the security deposit withheld by the landlord, with any interest calculated on the original amount only. No interest is payable for this period.

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

I note that the landlord submitted evidence about the condition of the rental unit after the tenants left; however, the landlord is unable to make a monetary claim through the tenants' Application.

The landlord may still file her own Application for compensation for the alleged damages caused by the tenants; however, the issue of the security deposit has now been conclusively dealt with in this hearing.

Having made the above findings, I order that the landlord pay the tenants the sum of **\$1,700.00** calculated as follows:

Item	Amount
Return of security deposit withheld by landlord	\$800.00
Monetary award for landlord's failure to comply with s. 38 of the <i>Act</i> (equivalent to the value of security deposit paid)	\$800.00
Recovery of filing fee for this Application	\$100.00
Total Monetary Order in Favour of Tenant	<u>\$1,700.00</u>

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$1,700.00 pursuant to sections 38 and 72 of the *Act*.

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: July 20, 2018

Residential Tenancy Branch