



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 tenants testified that they served the landlord via Canada Post registered mail with the Notice of Dispute Resolution Proceeding package and evidentiary materials, which was confirmed by the landlord. The landlord, who was the respondent in this matter, did not submit any evidence. Based on the undisputed testimonies of the parties, I find that the notice of this hearing was served in accordance with section 89 of the *Act*.

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.

Both parties agreed to the following information about this verbal tenancy agreement:

- The tenancy began on March 1, 2016. At that time, the tenants paid the landlord a \$400.00 security deposit, which the landlord continues to hold.
- No written condition inspection report was provided to the tenants upon move in or move out.
- Monthly rent of \$800.00 was payable on the first of the month.
- The tenancy ended on November 30, 2017.

The tenants testified that they sent the landlord a letter with their forwarding address on December 11, 2017 via Canada Post regular mail service. The tenants submitted a copy of the letter into documentary evidence. The landlord could not confirm the exact date he received the letter, but acknowledged that he received the letter around mid-December 2017.

The landlord stated that after the tenants moved out, he had contacted them to discuss issues regarding a broken cabinet and cleaning deficiencies. The tenants denied that the landlord contacted them after they moved out. The tenants stated that they had tried calling the landlord to try to resolve the issue of the security deposit, and they submitted a record of phone calls into documentary evidence. The landlord disputed the validity of the phone call evidence as no dates were noted, only the time of the calls was provided.

Both parties agreed that there was no written authorization provided by the tenants to allow the landlord to retain all or a portion of the security deposit.

The landlord confirmed that he did not file an application for dispute resolution to retain the security deposit.

I explained to the parties that the only matter before me for decision at this hearing was to make a determination on the tenants' application for the return of the security deposit, and that any testimony in relation to the alleged damages and cleaning deficiencies was not relevant for making a determination in this matter. I informed both parties that they

were both at liberty to make claims for damages in relation to the tenancy in accordance with the time limits provided by the *Act*.

Although the tenants' application only requested the return of the security deposit, I explained to the parties that the *Act* contains statutory provisions which can require that in certain circumstances a landlord must repay a tenant double the security deposit. The parties were also informed that if a tenant is entitled to doubling of the deposit, I must award the tenant double the deposit unless the tenant expressly waives entitlement. I confirmed with the tenants that they did not wish to waive entitlement to doubling of the deposit. Accordingly, I have considered whether the tenants are entitled to the return of double the amount of their deposit in making this decision.

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*.

It was also confirmed by both parties that the tenants did not agree, 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 tenants are 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 tenants are entitled to recover the \$100.00 filing fee paid for this application.

I note that the landlord provided verbal testimony 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 his 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 **\$900.00** calculated as follows:

Item	Amount
Return of security deposit withheld by landlord	\$400.00
Monetary award for landlord's failure to comply with s. 38 of the <i>Act</i> (equivalent to the value of security deposit paid)	\$400.00
Recovery of filing fee for this Application	\$100.00
Total Monetary Order in Favour of Tenants	<u>\$900.00</u>

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$900.00 pursuant to sections 38, 67 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 31, 2018

Residential Tenancy Branch