



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD

Introduction

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

- a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 1:43 p.m. in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 p.m. The tenants' agent attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenants' agent and I were the only ones who had called into this teleconference.

The tenant's agent testified that the landlord was served the notice of dispute resolution package by registered mail on February 6, 2018. The tenants' agent provided the Canada Post Tracking Number to confirm this registered mailing. I find that the landlord was deemed served with this package on February 11, 2018, five days after its mailing, in accordance with sections 89 and 90 of the *Act*.

Issue(s) to be Decided

1. Are the tenants entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act*?
2. Are the tenants entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
3. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the tenants' agent, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

The tenants' agent provided undisputed testimony that this tenancy began on October 29, 2017 and ended on November 29, 2017. Monthly rent in the amount of \$2,200.00 was payable on the 30th day of each month for the following month. A security deposit of \$1,000.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The tenants' agent testified that on August 29, 2018 the landlord was served with the tenants' forwarding address in writing via registered mail. The tenants' agent provided the Canada Post Tracking Number to confirm this registered mailing.

The tenants' agent testified that although the application for dispute resolution states that the tenants are seeking a Monetary Order in the amount of \$3,200.00, the tenants are only seeking the return of their \$1,000.00 security deposit.

Analysis

Section 38 of the Act requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a 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 deposit.

However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings based on the undisputed testimony of the tenant's agent. The tenancy ended on November 29, 2017. The tenants served the landlord with their forwarding address in writing on August 29, 2018 via registered mail. The landlord was deemed served with the tenants' forwarding address on September 3, 2018, five days after its mailing, in accordance with sections 88 and 90 of the *Act*.

15 days from September 3, 2018 is September 18, 2018. Since this hearing occurred on September 14, 2018, I find that pursuant to section 38 of the *Act*, the landlord is not yet obligated to return the tenants' security deposit. I therefore dismiss the tenants' claims with leave to reapply.

Conclusion

I dismiss the tenants' claims with leave to reapply.

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: September 14, 2018

Residential Tenancy Branch