



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD FFT

Introduction

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

- return of the security deposit pursuant to section 38 of the *Act*; and
- recovery of the filing fee for this application pursuant to section 72 of the *Act*.

Tenant D.K. attended at the date and time set for the hearing of this matter, and spoke on behalf of both tenants. The landlord did not attend this hearing, although I left the teleconference hearing connection open until 2:02 p.m. in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 p.m. 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 landlord and I were the only ones who had called into this teleconference.

As only the tenant attended the hearing, I asked the tenant to confirm that they had served the landlord with the Notice of Dispute Resolution Proceeding for this hearing. The tenant testified that they served the landlord with the notice of this hearing by Canada Post registered mail on March 24, 2018, and provided a Canada Post registered mail tracking number as proof of service, which I have noted on the cover sheet of this decision. The tenant also submitted into evidence the Canada Post tracking report to confirm that the documents were delivered and signed for by the landlord. As such, I find that the landlord was served with the notice of this hearing in accordance with section 89 of the *Act*.

The tenant testified that they had included some of their evidence in the Notice of Dispute Resolution Proceeding package and submitted additional evidence by Canada Post registered mail to the landlord at the end of April 2018.

Issue(s) to be Decided

Are the tenants entitled to the return of all or a portion of the security deposit? And if so, is the tenant entitled to any statutory compensation as a result of the landlord's failure to comply with the security deposit requirements of the *Act*?

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

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.

A written tenancy agreement was submitted into documentary evidence. The tenant confirmed the following information pertaining to the tenancy:

- This fixed term tenancy began on October 1, 2017, with an term end date of September 30, 2018.
- A security deposit of \$812.50 was paid by the tenants by certified cheque at the beginning of the tenancy on October 1, 2017.
- The tenancy ended on February 27, 2018 when the tenants returned the keys and vacant possession of the rental unit to the landlord.
- The tenants were present when a condition inspection walk-through was completed by the landlord's agent at move-in on October 1, 2017. The tenants received a written copy of the move-in condition inspection report at some time later in the tenancy but the tenant could not recall the date.
- The tenants were present when a condition inspection walk-through was completed by the landlord's agent at move-out on February 27, 2018. The tenants received a written copy of the move-out condition inspection report a few weeks later as it was sent to them by the landlord via registered mail.
- The tenants provided the landlord with their forwarding address in writing on the condition inspection report on February 27, 2018.

The tenant testified that they never agreed in writing to allow the landlord to deduct all or a portion of the security deposit. The tenant confirmed that they have not received any payment from the landlord regarding the security deposit.

Although the tenants' application only requested the return of the security deposit, the *Act* contains statutory provisions which can require that in certain circumstances a landlord must repay a tenant double the security 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. 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 tenancy ended on February 27, 2018, and the landlord received the tenants forwarding address the same day. Therefore, the landlord had 15 days from February 27, 2018, to address the security deposit in accordance with the *Act*.

There was no evidence presented that the landlord 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 the tenant that they did not agree, in writing, that the landlord could retain any portion of the security deposit.

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.

Having made the above findings, I order that the landlord pay the tenants the sum of **\$1,725.00** calculated as follows:

Item	Amount
Return of security deposit withheld by landlord	\$812.50
Monetary award for landlord's failure to comply with s. 38 of the <i>Act</i> (equivalent to the value of security deposit paid)	\$812.50
Recovery of filing fee for this Application	\$100.00
Total Monetary Order in Favour of Tenants	<u>\$1,725.00</u>

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$1,725.00 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: October 16, 2018

Residential Tenancy Branch