



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MNSD

Introduction

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

- authorization to obtain a return of double the amount of the security deposit, pursuant to section 38.

The individual landlord CK ("landlord") and the two tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord confirmed that she was the owner and operator of the landlord company named in this application and that she had permission to speak on its behalf (collectively "landlords"). This hearing lasted approximately 24 minutes.

The landlord confirmed receipt of the tenants' application for dispute resolution and notice of hearing. In accordance with sections 89 and 90 of the *Act*, I find that the landlords were duly served with the tenants' application and notice of hearing.

The landlord said that she did not receive the tenants' written evidence package, which the tenants said was sent to the landlords by email. I notified the tenants that since email was not permitted as a service method under the *Act*, and the landlords did not receive their evidence, I could not consider their written evidence package at the hearing or in my decision.

The tenants confirmed receipt of the landlords' written evidence package by email. They said that they reviewed it. They said that they did not want me to consider it because the landlords emailed it and their own evidence was not allowed by email. However, the tenants did not demonstrate any prejudice and confirmed receipt and review of the evidence. Therefore, I considered the landlords' written evidence package at the hearing and in my decision, as I find the tenants were sufficiently served with it, as per section 71(2)(c) of the *Act*.

Issue to be Decided

Are the tenants entitled to a monetary award equivalent to double the value of the security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on October 1, 2017 and ended on May 31, 2018. Monthly rent in the amount of \$1,000.00 was payable on the first day of each month. A security deposit of \$500.00 was paid by the tenants and the landlords continue to retain this deposit. A written tenancy agreement was not signed by the parties, only a verbal agreement was reached. This was a residential tenancy, as the tenants rented a motel room from the landlords and paid rent on a month-to-month basis. No move-in or move-out condition inspection reports were completed for this tenancy. A written forwarding address was sent by the tenants to the landlords by way of a letter that was posted on the landlords' office and personal residence door. The landlords received the letter. The landlords did not have written permission to keep any amount from the tenants' security deposit. The landlords did not file an application for dispute resolution to retain any amount from the security deposit.

The tenants seek a return of double the amount of their security deposit of \$500.00, totalling \$1,000.00. The landlords dispute the claim. The landlord stated that the tenants smoked inside the rental unit and she had to pay for cleaning and damages. She said that she went to the forwarding address provided by the tenants and the person living there told her that the tenants were not there.

Analysis

Section 38 of the *Act* requires the landlords 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 tenants' provision of a forwarding address in writing. If that does not occur, the landlords are 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 landlords have 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 landlords, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings based on the undisputed testimony of both parties. The tenancy ended on May 31, 2018. The tenants provided a written forwarding address by way of a letter that was posted to the landlords' door on June 15, 2018. The landlords confirmed receipt of this

letter. The tenants did not give the landlords written permission to retain any amount from their security deposit. The landlords did not return the deposit or make an application for dispute resolution to claim against the deposit. Regardless of the forwarding address provided by the tenants, which they confirmed was correct, the landlord did not attempt to or intend to return the deposit to them even when she visited the address, claiming that she was entitled to the deposit for damages and cleaning.

In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenants are entitled to receive double the value of their security deposit of \$500.00, totalling \$1,000.00.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of \$1,000.00 against the landlords. The landlords must be served with this Order as soon as possible. Should the landlords 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: January 04, 2019

Residential Tenancy Branch