



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT FFT

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67 of the *Act*, and
- recovery of the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

The tenants attended at the date and time set for the hearing of this matter. The landlord did not attend this hearing, although I left the teleconference hearing connection open until 1:52 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 Dispute Resolution Proceeding documents for this Application. I also confirmed from the teleconference system that the tenants and I were the only ones who had called into this teleconference.

As only the tenants attended the hearing, I asked the tenants to confirm that they had served the landlord with the Notice of Dispute Resolution Proceeding for this hearing. The tenants testified that the landlord was served with the Notice of Dispute Resolution Proceeding and their evidence by Canada Post registered mail on November 27, 2018 and submitted into evidence a registered mail tracking number as proof of service. I have noted the tracking number on the cover sheet of this Decision.

The tenants confirmed that the package was returned to them by Canada Post as "unclaimed" by the landlord.

Section 90 of the *Act* sets out when documents that are not personally served are considered to have been received. Unless there is evidence to the contrary, a document is considered or 'deemed' received on the fifth day after mailing it is served by mail (ordinary or registered mail).

Residential Policy Guideline 12. Service Provisions provides guidance on determining deemed receipt, as follows:

Where a document is served by Registered Mail, the refusal of the party to accept or pick up the Registered Mail, does not override the deeming provision. Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

Therefore, I find that the landlord was served with the notice of this hearing and the tenants' evidence on December 2, 2018, the fifth day after mailing, in accordance with sections 89 and 90 of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a monetary award as compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to recover the cost of the filing fee?

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.

The tenants testified that the parties had a written one-page sublet tenancy agreement, which was submitted into documentary evidence. The one-page tenancy agreement was emailed by the landlord to the tenants on August 28, 2018 and confirmed that the tenancy was for the rental of a furnished room, "for a stay of up to a max of 7 months beginning on October 1, 2018". In the agreement the landlord confirmed that the tenants' October rent payment of \$1,200.00 and \$400.00 security deposit were "paid in full on August 28, 2018 by e transfer".

The tenants submitted into documentary evidence 32 pages of text message communication between the parties. In summary, on the late afternoon of September 30, 2018, the tenants contacted the landlord to confirm their move in time for the following day. The landlord responded to advise that she was dealing with a family health issue and needed to postpone her move out of the rental unit until October 3, 2018. The landlord offered to cover the costs of the tenants' temporary accommodations. On the evening of October 2, 2018, the tenants again tried to confirm a move in time with the landlord for the following day and were once again told by the landlord that she needed to postpone moving out until October 5, 2018 and once again the landlord offered to cover the cost of the tenants' temporary accommodations.

By October 4, 2018, in text communication with the tenants, the landlord stated that she might not be able to move for another week, or might not move out at all. The landlord offered to refund the tenants' "deposit". As a result of the uncertainty of whether they would be able to ever take possession of the rental unit, the tenants decided to look for another rental unit. On October 5, 2018, the tenants informed the landlord that they had found other accommodations and requested the return of their rent payment for October 2018 and the security deposit.

The tenants confirmed that the landlord paid for the cost of the tenants' temporary accommodation from October 1 to 4, 2018, and therefore the tenants are not seeking compensation for the cost of their temporary accommodation.

The parties continued communication via text message for approximately a month regarding arrangements for the return of the tenants' October rent and the security deposit. On October 23, 2018, the tenants provided the landlord with their forwarding address, as the landlord offered to drop off the payment for the rent and security deposit to the tenants' residence. The landlord replied to the tenants' text message to comment that the tenants' new residence was close by and that it was in a "great area". The landlord did not end up dropping off the payment, and the parties re-engaged in text message discussion regarding the landlord returning the payment by e-transfer.

The tenants testified that the landlord ceased communications with them in early November 2018 when the tenants informed the landlord that they were proceeding with filing an application for dispute resolution with the Residential Tenancy Branch for the return of their rent and security deposit.

Analysis

Section 16 of the *Act* states that:

The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Section 7(1) of the *Act* states that:

If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 38(1) of the *Act* requires the landlord to either return the tenant's security and/or pet damage deposits in full or file for dispute resolution for authorization to retain the deposit 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

Section 38(6) of the *Act* requires that if a landlord fails to comply with section 38(1) of the *Act*, then the landlord must pay the tenant double the amount of the security deposit.

In the absence of the landlord attending the hearing, based on the testimony and evidence of the tenants, on a balance of probabilities, I make the following findings in this matter:

- The one-page written tenancy agreement between the parties very clearly stated that the tenancy would begin on October 1, 2018.
- The landlord failed to allow the tenants to move in on October 1, 2018, therefore the landlord contravened the tenancy agreement by failing to allow the tenants to move into the rental unit in accordance with the terms of the tenancy agreement. As a result of the landlord's contravention of the terms of the tenancy agreement, the landlord must compensate the tenants for the loss of rent they paid for the month of October 2018 of \$1,200.00.
- As the landlord prevented the tenants from taking possession of the rental unit on October 1, 2018, I find that the tenancy ended on that day.

- The tenants provided the landlord with their forwarding address by text message on October 23, 2018, which was confirmed received by the landlord via text message.
- I note that the tenants provided their forwarding address to the landlord using text message, instead of through one of the acceptable methods for providing written notice as set out in section 88 of the *Act*. However, section 71(2)(c) of the *Act* allows me to determine if a document not served in accordance with section 88 of the *Act* is “sufficiently given or served for purposes of this *Act*.” Since the landlord replied to the tenants’ text messages and confirmed receipt of the address provided by the tenants, I find that landlord was sufficiently served with the tenants’ forwarding address pursuant to section 71(2)(c) of the *Act*.
- The landlord failed to return the tenants’ security deposit within 15 days after receipt of the tenants’ forwarding address and the end of the tenancy. Therefore, the landlord contravened section 38(1) of the *Act* by failing to return the tenants’ security deposit or filing an application for dispute resolution to retain the security deposit. As a result of the landlord’s contravention of section 38(1) of the *Act*, the landlord must pay the tenants double the amount of their \$400.00 security deposit, for a total of \$800.00 in accordance with the statutory compensation set out in section 38(6) of the *Act*.

Therefore, based on the above-noted findings, the tenants are entitled to a monetary award of \$2,000.00 for compensation due the landlord’s contravention of the tenancy agreement and contravention of section 38(1) of the *Act*. As the tenants were successful in their application, they are also entitled to recover the \$100.00 cost of their filing fee for this application from the landlord.

In summary, I issue a Monetary Order in favour of the tenants for \$2,100.00 as follows:

Item	Amount
Return of rent paid for October 2018	\$1,200.00
Monetary award for landlords’ failure to comply with s. 38 of the <i>Act</i> (equivalent to double the \$400.00 security deposit paid)	\$800.00
Recovery of filing fee for this Application	\$100.00
Total Monetary Order in favour of Tenants	\$2,100.00

Conclusion

I issue a Monetary Order in favour of the tenants in the amount of \$2,100.00.

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: January 14, 2019

Residential Tenancy Branch