



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FFT

Introduction

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

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

While the tenants, CR and VG, attended the hearing by way of conference call, the landlord did not. I waited until 1:48 p.m. to enable the landlord to participate in this scheduled hearing for 1:30 p.m. The tenants were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenants provided sworn, undisputed testimony that they had served the landlord with the tenants' application for dispute resolution hearing package ("Application") and evidence by way of registered mail on August 31, 2018. The tenants provided a tracking number in their evidence. In accordance with sections 88, 89, and 90 of the *Act*, I find that the landlord was deemed served with the Application and evidence on September 5, 2018, five days after mailing.

Issues(s) to be Decided

Are the tenants entitled to the return of their security deposit?

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

Background and Evidence

The tenants provided the following sworn, undisputed testimony as the landlord did not attend the hearing. Four tenants resided in the home, and had separate tenancy agreements with the landlord.

- 1) Tenant VG: Rent was set at \$675.00 per month. The landlord collected, and still holds a security deposit in the amount of \$335.00. VG moved in on August 31, 2017, and moved out on January 31, 2018. VG provided a forwarding address by way of registered mail on February 28, 2018. The tracking info was submitted in evidence.
- 2) Tenant CR: Rent was set at \$600.00. The landlord collected, and still holds a security deposit in the amount of \$300.00. CR moved in on November 1, 2017, and moved out on January 31, 2018. CR provided her forwarding address by way of registered mail on March 19, 2018. The tracking information was provided in evidence.
- 3) Tenant JF: Rent was set at \$595.00. The landlord collected, and still holds a security deposit in the amount of \$297.50. JF moved out on February 28, 2018, and a forwarding address was provided by way of registered mail on March 15, 2018. The tenants provided a tracking number during the hearing.
- 4) Tenant MM: Tenant MM is requesting the return of security deposit of \$225.00. MM provided a forwarding address by way of registered mail on March 3, 2018 after he moved out on January 31, 2018.

The tenants testified that the landlord has ignored their requests for their deposits, and has refused to communicate with them.

Analysis

Section 38(1) of the *Act* requires that landlords, within 15 days of the end of the tenancy or the date on which the landlord receive the tenants' forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenants' security deposit plus applicable interest and must pay the tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenants' provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenants agree in writing the landlords may retain the amount to pay a liability or obligation of the tenant."

In this case, I find that the landlord did not return the tenants' security deposits in full within 15 days of receipt of the tenants' forwarding addresses in writing. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenants' security deposits. The tenants gave sworn testimony that the landlord had not obtained their written authorization at the end of the tenancy to retain any portion of the tenants' deposits.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

Unless the tenants have specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenants' forwarding address is received in writing; ...*
- *whether or not the landlord may have a valid monetary claim.*

In this case, I find that the landlord has not returned the tenants' security deposits within 15 days of the provision of their forwarding addresses. In accordance with section 38 of the *Act*, I find that the tenants are therefore entitled to a monetary order amounting to double the original security deposits.

As the tenants were successful in their application, I find that the tenants are also entitled to recover the filing fee from the landlord.

Conclusion

I issue 4 Monetary Orders in the tenants' favours under the following terms which allows the tenants to recover their original security deposits, plus a monetary award equivalent to the value of their deposits as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*. I find the tenants are also entitled to \$100.00 for recovery of the filing fee for this application, which will be applied as \$25.00 per tenant.

Tenant VG	Amount
Return of Security Deposit	\$335.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	335.00
Recovery of Filing Fee	25.00
Total Monetary Order	\$695.00

Tenant CR	Amount
Return of Security Deposit	\$300.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	300.00
Recovery of Filing Fee	25.00
Total Monetary Order	\$625.00

Tenant JF	Amount
Return of Security Deposit	\$297.50
Monetary Award for Landlord's Failure to	297.50

Comply with s. 38 of the <i>Act</i>	
Recovery of Filing Fee	25.00
Total Monetary Order	\$620.00

Tenant MM	Amount
Return of Security Deposit	\$225.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	225.00
Recovery of Filing Fee	25.00
Total Monetary Order	\$475.00

The tenant(s) are provided with Orders in the above terms and the landlord must be served with a copy of the Orders as soon as possible. Should the landlord fail to comply with the Orders, the Orders 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