



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:

- A Monetary Order for the return of the Security or Pet Damage Deposit ("the security deposit") pursuant to section 38 of the Act; and
- Authorization to recover the filing fee from the Landlord, pursuant to section 72 of the Act.

Both Tenants attended the hearing, Tenant S.S. presented evidence and testimony on behalf of both Tenants. The Landlord did not attend. I left the teleconference hearing connection open for an additional 15 minutes, in order to enable the Landlord to call into this hearing that was 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. I also confirmed from the teleconference system that the Tenants and I were the only ones who had called into this hearing.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing – If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application with or without leave to reapply.

In accordance with the Rules of Procedures, I proceed with the conduct of this scheduled hearing.

The Tenants were given a full opportunity to provide affirmed testimony, make submissions and present evidence.

The Tenants testified they served the Notice for Dispute Resolution and evidentiary materials to the Landlord via Canada Post Registered Mail to the Landlord's addresses and to the Landlord's lawyer's address. On January 3rd, 2019 the Landlord submitted late evidence, thus confirming he was aware of this Hearing. As per sec 89 and 90 of the Act, the Landlord is deemed to have been served on the fifth day after the Notice for Dispute Resolution was mailed;

consequently, I find the Landlord was deemed to have been served in accordance with the Act. For reference, the Tenants' Canada Post Registered Mail numbers are quoted on the cover sheet of this decision.

Rule of Procedure 3.16 requires the respondent, in this case the Landlord, to demonstrate at the hearing to the satisfaction of the arbitrator that each applicant was served with all their evidence as required by the Act and these Rules of Procedure. Rule of Procedure 7.4 requires that evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent do not attend the hearing to present evidence, any written submissions supplied may or may not be considered. As the Landlord or their agent failed to attend this hearing to present their evidence, I exercise my discretion and decline to consider the late submission.

Issue(s) to be Decided

Are the Tenants entitled to:

- A Monetary Order for the return of the Security Deposit pursuant to section 38 of the Act; and
- Authorization to recover the filing fee from the Landlord, pursuant to section 72 of the Act.

Background and Evidence

The Tenants testified and submitted into evidence a copy of the tenancy Agreement. The tenancy started January 25, 2013. The rent was \$1,750.00 per month. The Tenants paid a Security Deposit in the amount of \$1,750.00. The Tenants stated that they were aware that the amount of the deposit was more than allowed under the Act, however they agreed to it. The tenancy ended on August 30, 2018. Landlord continues to hold the security deposit. The Tenants provided the Landlord with their forwarding address on August 11, 2018.

The Tenants testified that they vacated the rental unit on August 30, 2018 after the Landlord issued a Two Month Notice to end Tenancy in June 20, 2018, with an Aug 31, 2018, effective day. On Aug 31, 2018 they received a text message from the Landlord asking for a back door key. The Tenants stated they never used the back door and that they did not have a key and that this was the last communication the Tenants had from the Landlord.

The Tenants provided their forwarding address in writing to the Landlord on August 11, 2018 and requested that their security deposit be returned to them on September 1, 2018, on the day they were to meet with the Landlord. The Tenants stated in the letter that should the Landlord fail to meet with them on September 1st, they would expect a cheque be provided to them by September 15, 2018. A copy of the letter was submitted into evidence.

The Tenants further testified that there was no condition inspection offered or conducted at the end of the tenancy; the Landlord did not arrive on September 1st, 2018 and the Tenants did not

hear back from the Lawyer or the Landlord. The Tenants testified that they left the rental unit very good condition.

The Tenants testified they were seeking double the security deposit.

Analysis

This dispute involves consideration of the applicable sections of the Act dealing with the return of the Security or Pet Damage Deposit.

The Tenants provided uncontested evidence and testimony that that there was no condition inspection report at the end of the tenancy; and that they provided the Landlord and the Landlord's lawyer, with their forwarding address for the return of the security deposit. The Act has extensive provisions for landlords and tenants to follow, when entering and ending a landlord/tenant relationship.

Section 36 of Act, establishes that the right of a landlord to claim against the security deposit is extinguished when a Condition Inspection report is not completed at the end of a tenancy:

(2) Unless the tenant has abandoned the rental unit, the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 35 (2) *[2 opportunities for inspection]*,

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations. [Emphasis added]

Section 38 of the Act provides that landlord must return the security deposit within 15 days after the landlord receives the tenant's forwarding address. Failure to return the security deposit within the legislated timeframe, results in doubling of the amount of the security deposit:

Return of security deposit and pet damage deposit

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. [Emphasis added]**

Section 38 (6) of the Act states that when a landlord does not comply with section 38 (1) of the Act, the landlord may not make a claim against the deposits and must pay the tenant double the security deposits:

(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. [Emphasis added]**

The Tenants have presented sufficient undisputed testimony and evidence to prove that the Landlord extinguished his right to claim against the security deposit and that the Landlord failed to return the security deposit in accordance with the Act.

I find that the Tenants are entitled to monetary compensation in accordance with the provisions of section 38(6)(b) of the Act. The Tenants paid a security deposit in the amount of \$1,750.00 and are entitled to a monetary compensation equivalent to double the security deposit (1750 x 2) an award of \$3,500.00.

As the Tenants were successful in this application, I find the Tenants are entitled to recover the cost of the filing fee in the amount of \$100.00.

Security Deposit	\$1,750.00
Double Security Deposit	3,500.00
Filing Fee	1,00.00
Total award	\$3,600.00

Conclusion

I find the Tenants are entitled to a monetary award pursuant to sections 38(6)(2), and 72 of the Act, as a result of the Landlord's failure to return the security deposit within the required timeframes.

As such, I grant a Monetary Order in favour of the Tenants in the amount of **\$3,600.00** being equivalent of double the security deposit and the recovery of the \$100.00 filling fee.

This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenants may file the order in the Provincial Court (Small Claims) and be 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 30, 2019

Residential Tenancy Branch