



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing dealt with an application by the tenants under the *Manufactured Home Park Tenancy Act* (the *Act*) for the following:

- A return of the security deposit under section 91; and
- Reimbursement of the filing fee under section 60.

The tenants MF and CT attended. JK testified he is one of the owners and managers of the landlord and attended as agent for the landlord (“the landlord”). Both parties were given the opportunity to provide affirmed testimony, present evidence, cross examine the other party and make submissions.

The landlord agreed to an amendment to the name of the landlord in the proceedings to correct the name as indicated above.

The landlord acknowledged receipt of the Notice of Hearing and all evidentiary materials from the tenant. No issues of service were raised. I find the landlord was served pursuant to the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a monetary award equivalent to double the value of the security deposit because of the landlord’s failure to comply with the provisions of the *Act* pursuant to section 91?

Are the tenants entitled to reimbursement of the filing fee under section 60 of the *Act*?

Background and Evidence

The parties agreed on the following. They entered into a tenancy agreement starting December 22, 2017 and ending July 31, 2018. Rent was \$500.00 monthly payable on the first of the month. At the beginning of the tenancy, the tenants provided a security deposit of \$575.00 and a pet deposit of \$300.00, for a total of \$875.00, (together, “the deposits”). The landlord retained the deposits. The tenants have not provided written authorization to the landlord to retain the deposits.

JK stated he is an owner and manager of the landlord who operates the subject park. The tenants stated they provided their forwarding address to the landlord by registered mail on September 24, 2018. The landlord denied receipt of the letter and stated he did not have their forwarding address until he received the Notice of Hearing and Application for Dispute Resolution, receipt of which he acknowledged on November 28, 2018.

In explanation, the tenants provided affirmed testimony that they sent a letter containing their forwarding address to JK, c/o [name of park and address of park], by registered mail on September 24, 2018. The tenants provided the Canada Post tracking number referenced on the first page of the decision.

The tenants stated that there was one mailbox for the park where they resided, and the letter was addressed to that address. The landlord and all tenants received mail at this address which was collected and then distributed to individual recipients. The tenants testified this practice was followed when they lived in the park.

The tenants testified they were concerned about whether the landlord had picked up the registered mail. Accordingly, they called the local mail delivery office and spoke with an employee who informed them that the employee had attempted to call JK to notify him that there was a registered mail letter for him available for pick-up. Nevertheless, the landlord did not respond to the carrier’s call and did not pick up the registered mail which the carrier returned undelivered to the tenants.

Contrary to the evidence provided by the tenants, the landlord testified that neither the landlord or the agent JK ever received mail at the address used by the tenants. The

landlord said the tenancy agreement contained an address for the landlord that was different and to which the tenants should have sent their forwarding address.

The landlord stated he kept the deposits because of the landlord's claims for compensation. The landlord testified he has not initiated dispute resolution proceedings and believed he could keep the deposits in satisfaction of his claims.

Analysis

I have reviewed all evidence and testimony before me and will refer only the relevant facts and issues meeting the requirements of the rules of procedure.

The *Act* contains comprehensive provisions regarding security and pet damage deposits.

Section 38(1) of the *Residential Tenancy Act* (applicable under section 91 of the *Act*) stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of a tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) of the *Residential Tenancy Act* specifies that, should the landlord fail to comply with Section 38(1), the landlord must pay the tenant double the security deposit.

Section 81 of the *Act* sets out how a party is to delivery and serve documents (emphasis added):

81 All documents, other than those referred to in section 82 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person **must be given or served in one of the following ways:**

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or **registered mail** to the address at which the person resides or, **if the person is a landlord, to the address at which the person carries on business as a landlord;**
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;

- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 64 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service prescribed in the regulations.

I find the tenants provided their forwarding address to the landlord by registered mail at the address at which the landlord carried on business as a landlord pursuant to section 81 above. I find the tenants did not provide consent to the landlord to keep any portion of the security deposit. I find the landlord did not bring an application within the time limits.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find the landlord is in breach of the *Act* by failing to return the security deposit or applying for dispute resolution as required. I find the tenants are entitled to a monetary award in the amount of double the deposits.

As the tenants are successful in this application, I find the tenants are entitled to reimbursement of the filing fee pursuant to section 60.

My award to the tenants of **\$1,850.00** is summarized as follows:

ITEM	AMOUNT
Deposits	\$875.00
Double the Deposits	\$875.00
Reimbursement of the filing fee	\$100.00
Monetary Award Tenants	\$1,850.00

The landlord is unable to make a monetary claim through the tenants' application. The landlord must file the landlord's own application to keep the deposit within the 15 days of certain events, as explained above.

The landlord may still file an application for alleged damages.

However, the issue of the security deposit has now been conclusively dealt with in this hearing.

Conclusion

I order the landlord pay to the tenants the sum of **\$1,850.00** pursuant to the *Act*.

The landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this order, the 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 the *Act*.

Dated: February 06, 2019

Residential Tenancy Branch