



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of double the amount of the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord and the two tenants, male tenant ("tenant") and "female tenant," 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 tenant confirmed that he had permission to represent the female tenant as an agent at this hearing. This hearing lasted approximately 35 minutes.

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

Preliminary Issues

At the outset of the hearing, the tenant confirmed that he was seeking to obtain a monetary order for a \$100.00 filing fee from a previous hearing decision of a different Arbitrator at the Residential Tenancy Branch ("RTB"). The tenant did not provide a full copy of the previous decision or a file number, only a photograph of two partial pages of the decision. He said that he was given authorization to deduct the \$100.00 filing fee amount from future rent but he moved out of the rental unit before he could enforce it

and the landlord still had not given that amount to him. I notified the tenant that I could not overturn or modify a decision or order of a different Arbitrator at a previous RTB hearing. I informed him that he could seek remedies from that Arbitrator regarding that specific decision and file number but I could not give him legal advice regarding what to do. I informed him that this portion of the tenants' application was dismissed without leave to reapply.

The tenant confirmed that he was seeking \$34,000.00 for negligence and an eye injury as a result of a work accident while he was employed as a caretaker by the landlord. The tenant stated that he had already won a previous claim against the landlord for discrimination relating to his employment for the landlord, at the appropriate venue. The landlord agreed that this was a work-related claim. Sections 2 and 6 of the *Act* only permit me to deal with residential tenancy matters enforceable between a landlord and tenant pursuant to a tenancy agreement. I notified both parties that employment-related injuries and claims were not residential tenancy matters and were not within the jurisdiction of the RTB. I informed both parties that I declined jurisdiction over the tenants' monetary application for \$34,000.00, which is related to his work injury.

Issues to be Decided

Are the tenants entitled to a monetary order for the return of double the amount of their security deposit?

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

Background and Evidence

While I have turned my mind to the tenants' documentary evidence and the testimony of both parties, not all details of the respective 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 ended on October 1, 2018. Monthly rent of \$400.00 was payable on the first day of each month. A security deposit of \$450.00 was paid by the tenants and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. No move-in or move-out condition inspection reports were completed for this tenancy. The tenants did not provide written permission to the landlord to retain any amount from their security

deposit. The landlord did not file an application to retain any amount from the security deposit.

The tenant claimed that he provided a written forwarding address by way of mail that he sent to the landlord during the tenancy, which included a return address on the mail envelopes. The tenant said that he did not specifically provide a written forwarding address to the landlord at the end of the tenancy because he was in fear for his life and he thought the landlord's son wanted to beat him up. The landlord denied receiving any return mail address from the tenants' mail or by way of this current application. He said that he could not return or apply to keep the security deposit because he did not have any forwarding address from the tenants.

The tenants seek a return of double the amount of their security deposit of \$450.00, totalling \$900.00. They also seek to recover the \$100.00 filing fee for this application.

Analysis

Section 38 of the *Act* requires the landlord 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 landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposit. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the 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 landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

The tenancy ended on October 1, 2018. The tenants did not give the landlord written permission to retain any amount from their security deposit. The landlord did not return the deposit to the tenants or make an application to claim against it. The tenants claim that they put their return address on mail sent to the landlord. However, I find that the tenants did not provide a specific document indicating a forwarding address at the end of their tenancy, for service of documents or for the return of their security deposit. The tenant said that he was in fear for his life and did not want the landlord to know his address. Therefore, I find that the tenants did not provide a written forwarding address in accordance with section 38 of the *Act*.

The tenants did not provide their forwarding address to the landlord during this hearing. I order the tenants to provide a written forwarding address to the landlord in accordance

with section 88 of the *Act*. The landlord then has 15 days after receiving that forwarding address from the tenants, to either return the security deposit in full or to file an application for dispute resolution. If the landlord does not complete either of the above actions within the above deadline, the tenants may apply for the return of their security deposit in accordance with section 38 of the *Act*. Accordingly, the tenants' application for the return of double their security deposit is dismissed with leave to reapply.

Since the tenants were not successful in this current application, I find that they are not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

I order the tenants to provide a written forwarding address to the landlord in accordance with section 88 of the *Act*. The landlord has 15 days after receiving that forwarding address from the tenants, to either return the security deposit in full or to file an application for dispute resolution.

The tenants' application to obtain a return of double the security deposit is dismissed with leave to reapply.

The tenants' application to obtain a monetary order for a previous hearing decision \$100.00 filing fee and this current hearing \$100.00 filing fee, is dismissed without leave to reapply.

I decline jurisdiction regarding the tenants' monetary application for \$34,000.00 for workplace injuries and negligence. I make no determination on the merits of this claim. Nothing in my decision prevents the tenants from advancing their claims before a Court of competent jurisdiction.

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: February 21, 2019

Residential Tenancy Branch