



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The tenants applied for the return of their security deposit and pet damage deposit balance.

The tenants appeared at the teleconference hearing. The tenants gave affirmed testimony. The hearing process was explained to the tenants. During the hearing the tenants presented their evidence. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Hearing ("Notice of Hearing"), application and documentary evidence were considered. The tenants provided affirmed testimony that the Notice of Hearing, application and documentary evidence were served on the landlord by registered mail on December 8, 2018 and was addressed to the landlord's home where the landlord was residing with her mother. The tenants provided a registered mail tracking number, which has been included on the cover page of this decision for ease of reference.

Documents sent by registered mail are deemed served five days after mailing pursuant to section 90 of the *Act*. The tenants testified that the registered mail package was returned as "unclaimed". I find the landlord was duly served on the fifth day after mailing on December 13, 2018, in accordance with the *Act*. I note that refusal or neglect on the part of the respondent to accept a registered mail package does not constitute a ground for an Application for Review Consideration under the *Act*. As the landlord failed to attend the hearing, I consider this application to be undisputed by the landlord. The hearing continued without the landlord present a result.

Preliminary and Procedural Matters

The tenants confirmed their email address and the landlord's email address at the outset of the hearing. The tenants also confirmed their understanding that the decision would be sent to both parties by email and that any applicable orders would be emailed to the tenants.

The tenants also verbally confirmed during the hearing that they are not waiving any rights to double the return of both the security deposit and pet damage deposit balance(s) under the *Act*.

Issue to be Decided

- Are the tenants entitled to the return of double their security deposit under the *Act*?

Background and Evidence

The tenants affirmed that although a written tenancy agreement existed between the parties, a copy was not submitted in evidence as the tenants were not provided a copy of the signed tenancy agreement by the landlord. The tenants testified that a fixed-term tenancy began on November 1, 2014 and reverted to a month to month tenancy after November 1, 2015.

The tenants testified that the tenancy ended by way of an undisputed 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") on June 30, 2018, when the tenants returned the rental unit keys and their written forwarding address on a piece of paper personally to the landlord. During the tenancy, monthly rent was \$1,300.00 per month and was due on the first day of each month. The tenants confirmed that rent was never increased during the tenancy. The tenants stated that they paid a \$500.00 security deposit and a \$500.00 pet damage deposit at the start of the tenancy. The tenants also confirmed that they provided written permission by way of an email to the landlord dated July 9, 2018 surrendering \$200.00 of their \$1,000.00 in combined deposits to the landlord. In the email dated July 9, 2018, the tenants write that \$100.00 was for additional cleaning and \$100.00 was for the move-in/move-out fee as they were renting a condominium.

The tenants stated that the landlord has failed to return any of their \$800.00 security deposit and pet damage deposit balance and has not filed an application to claim against the combined deposits. The tenants also denied giving permission for the landlord to retain the remaining \$800.00 amount of the combined deposits.

Regarding the written forwarding address, the tenants testified that they personally served the landlord in the rental unit on June 20, 2018, which was the same date they personally returned the rental unit keys to the landlord.

Analysis

Based on the undisputed documentary evidence and the tenants' undisputed testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenants did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The tenants testified that the landlord was served with their written forwarding address personally on June 30, 2018. I have no reason to believe otherwise as this application is undisputed by the landlord. I also note that the tenants disclosed that they gave the landlord permission to retain \$200.00 of the original \$1,000.00 in deposits, which left a combined deposits balance owing by the landlord to the tenants of \$800.00. The tenants confirmed during the hearing that they were not waiving their right to double the return of both deposits under section 38 of the *Act*.

Based on the undisputed testimony before me, I find the landlord was served with the tenants' written forwarding address on June 30, 2018. I accept the tenants' undisputed testimony that the landlord has failed to return the remaining \$800.00 in combined deposits. Section 38 of the *Act* applies which states:

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.

(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

In the matter before me, I find that the landlord breached section 38 of the *Act* by failing to return the combined deposits balance of \$800.00 to the tenants within 15 days of

receiving the forwarding address of the tenants in writing as of June 30, 2018. Therefore, as the landlord also failed to make a claim against the tenants' security deposit within 15 days of June 30, 2018, I find the tenants are entitled to the return of double the combined deposits balance of \$800.00 for a total of **\$1,600.00**. I note that the tenants' security deposit and pet damage deposit accrued \$0.00 in interest since the start of the tenancy.

Monetary Order – I find that the tenants have established a total monetary claim in the amount of **\$1,600.00**, comprised of double the security deposit and pet damage deposit balance of \$800.00. I grant the tenants a monetary order pursuant to section 67 of the *Act* in the amount of **\$1,600.00**.

Conclusion

The tenants' application is fully successful. The tenants have established a total monetary claim of \$1,600.00 comprised of the return of double their security deposit and pet damage deposit balance. The tenants have been granted a monetary order under section 67 of the *Act* in the amount of \$1,600.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

I caution the landlord not to breach section 38 of the *Act* in the future.

This decision will be emailed to both parties as indicated above.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: March 11, 2019

Residential Tenancy Branch