



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 recover:

- double their security deposit from the landlord pursuant to section 38; and
- their filing fee for this application from the landlord pursuant to section 72.

Tenant RN attended the hearing on behalf of the tenants. Landlord SG attended the hearing on behalf of the landlords. Both were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Tenant RN testified that the landlords were served the notice of dispute resolution form and supporting evidence package via registered mail on January 23, 2019. Tenant RN provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. Landlord SG confirmed receipt of the notice of dispute resolution package via registered mail. I find that the landlords to be deemed served with this package on January 28, 2019, five days after the tenants mailed it, in accordance with sections 88, 89, and 90 of the Act.

The landlords did not provide any documentary evidence at this hearing.

Issue(s) to be Decided

Are the tenants entitled to recover:

- double their security deposit from the landlords; and
- their filing fee for this application from the landlords?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into an oral tenancy agreement starting in May or June of 2018 (the evidence was unclear). Monthly rent is \$800.00. The tenants paid the landlords a security deposit of \$400.00. The landlords still retain this deposit.

Tenant RN testified that the tenants moved out of the rental unit on November 30, 2018. She testified that she provided the landlords with a copy of her forwarding address via a letter sent by registered mail on December 17, 2018. In this letter she asked for the return of the security deposit.

Tenant RN testified that, to date, the tenants have not received any part of the security deposit back from the landlords.

Landlord SG agrees that the tenants moved out of the rental unit on November 30, 2018, and that the forwarding address was provided to the landlord in the letter of December 17, 2018.

Landlord SG agrees that the landlords have not returned the security deposit. She says the reason why they have not is because the tenants failed to give sufficient notice to end the tenancy. She testified that the tenants said, on November 12, 2018, they "might" end the tenancy at the end of November 2018. She testified that, as a result of the insufficient notice given, she was unable to re-let the rental unit for December 1, 2018 and failed to earn rent in December 2018. She testified that she re-let the rental unit as of January 1, 2019. Additionally, she testified that the tenants still retain copies of keys to the rental unit.

Tenant RN disagreed that the tenants had given insufficient notice. She stated that the landlords were agreeable to the tenants ending the tenancy at the end of November 2018. She testified that if they were not, the tenants would have remained in the rental unit for the month of December 2018, so as to provide one month's notice. Tenant RN agreed that the tenants retain copies of keys to the rental unit. She testified that she would return them once the damage deposit was returned.

Analysis

Section 38(1) of the Act 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.

Based on the testimony of the parties, I find that the tenancy ended on November 30, 2019, and that the tenants provided their forwarding address in writing to the landlords on December 17, 2018.

I find that the landlords have not returned the security deposit to the tenants within 15 days of receiving their forwarding address, or at all.

I find that the landlords have not made an application for dispute resolution claiming against the security deposit within 15 days of receiving the forwarding address from the tenants.

It is not enough for the landlords to allege the tenants breached the tenancy agreement by failing to give sufficient notice of their intention to end the tenancy or that the tenants improperly retained copies of the key to the rental unit. They must actually apply for dispute resolution, claiming against the security deposit, within 15 days from receiving the tenants' forwarding address.

The landlords did not do this. Accordingly, I find that they have failed to comply with their obligations under section 38(1) of the Act.

Neither party gave evidence as to whether move-in and move-out condition inspection reports were completed and, if they were not completed, the reason they were not. I have insufficient evidence to determine if either the tenants' or landlords' right to claim against the security deposit has been extinguished pursuant to sections 24 or 36 of the Act. Accordingly, I make no findings on this matter.

Section 38(6) of the Act sets out what is to occur in the event that a landlord fails to return or claim the security deposit within the specified timeframe:

- (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.

The language of section 38(6)(b) is mandatory. As the landlords have failed to comply with section 38(1), I must order that they pay the tenant double the amount of the security deposit (\$800.00).

As the tenants have been successful in their application, they are entitled to have their filing fee of \$100.00 repaid by the landlords.

Conclusion

Pursuant to sections 38, 67, and 72 of the Act, I find that the tenants are entitled to a monetary order in the amount of \$900.00, comprised of an amount equal to double the security deposit, and the filing fee.

Should the landlords fail to comply with this order, this order may be filed in, and enforced as an order of, the Small Claims Division of the Provincial 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: March 26, 2019

Residential Tenancy Branch