



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT MNSD**

Introduction

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

- A monetary order for a return of double the value of the security deposit pursuant to section 38; and
- Authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both the tenant and the landlord attended the hearing. The tenants were represented by the tenant EBM ("tenant"). The landlord confirmed he received the tenant's notice of hearing package and evidence. The tenants did not receive the landlord's evidence.

Preliminary Issue

Rule 3.15 of the Residential Tenancy Branch Rules of Procedure provide that the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. The landlord testified he was unaware of the requirement to serve the tenants with his evidentiary documents. I determined it will cause unreasonable prejudice to the tenant if I consider evidentiary documents that the tenants have not received; in accordance with Rule 3.17, I exclude the landlord's evidentiary documents from consideration.

Issue(s) to be Decided

- Are the tenants entitled to a return of double the value of their security deposit?
- Can the tenants recover the filing fee from the landlord?

Background and Evidence

Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is referenced in this decision.

A copy of the tenancy agreement was provided by the tenants. The tenancy began on February 15, 2018 as a six-month fixed term and converted to a periodic tenancy; the tenancy ended on October 31st, 2019. Rent was \$1,600.00 per month, payable on the first day of each month. A security deposit of \$800.00 is still being held in trust by the landlord.

A move-in condition inspection report was not completed at the commencement of the tenancy.

The tenant testified a move-out condition inspection report was not completed when they moved out on October 31, 2018 and the landlord did not invite them to do one until November 10th. This was done by text message, the form of communication acknowledged by both parties as the preferred means of communication. The tenants emailed their forwarding address to the landlord on November 10th on the same date also sent it by registered mail. The tracking number is listed on the cover page of this decision. A screenshot of the letter was provided as evidence by the tenants.

The landlord testified that he received the forwarding address by email on November 10th. The copy of the forwarding address sent by registered mail was not received by him, and the tenants agree it was returned to them. The landlord alleges the tenants did not provide him with a handwritten notice of forwarding address, which the tenants do not deny. The landlord submits that for the notice of forwarding address to be valid, it must be handwritten.

The landlord also submits there was damage to the doors in the rental unit due to condensation from not opening windows. He did not file a claim against the tenants to be compensated for this damage.

Analysis

The landlord acknowledged receiving the written notice of the tenants' forwarding address by email on November 10, 2019. There is no requirement in the *Act* that the notice be handwritten. I find the notice of forwarding address has been sufficiently served for the purposes of this *Act* on November 10, 2019, pursuant to section 71(2)(b).

At the commencement of the tenancy, the landlord did not complete a condition inspection, as required by section 23 of the *Act*. Pursuant to section 24, the landlord's right to claim against the security deposit is extinguished.

The landlord did not return the tenant's security deposit as required by section 38(1) of the *Act*. The section is reproduced below:

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.

As the landlord did not comply with Section 38(1), he is subject to the consequences set out in 38(6):

38 (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.**

I award the tenants compensation in the amount of **\$1,600.00**, representing double the security deposit paid pursuant to section 38(6) of the *Act*.

As the tenants' application was successful, I award them the filing fee of **\$100.00**.

Conclusion

I find the tenants are entitled to monetary compensation pursuant to section 67 in the amount of **\$1,700.00**. The landlords must be served with this Order as soon as possible. Should the landlords fail to comply with this Order, this 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 12, 2019

Residential Tenancy Branch