



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:

- return of the security deposit pursuant to section 38 of the *Act*; and
- recovery of the filing fee for this application pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Only landlord Ro.D. attended the hearing and confirmed that she was speaking on behalf of both the landlords.

As both parties were present, service of documents was confirmed. The tenants testified that the landlords were each individually served with the application for dispute resolution and evidence by Canada Post registered mail, and submitted into evidence copies of the two registered mail receipts and tracking numbers in support of that testimony. I have noted the tracking numbers on the cover sheet of this Decision. The tenants testified that landlord Ri.D.'s package was confirmed delivered, but that landlord Ro.D.'s package was returned to the tenants. This was undisputed by landlord Ro.D. Landlord Ro.D. testified that landlord Ri.D. had provided her with a copy of the tenants' package.

Therefore, based on the testimonies of the parties, I find that the landlords were sufficiently served with the notice of this hearing and the tenants' evidence pursuant to section 71(2)(c) of the *Act*.

Landlord Ro.D. testified that the tenant N.S. was served with their evidence by email, however the tenant disputed receipt of evidence, although acknowledged there had been prior email exchanges between the parties, which the tenant had not considered as evidence at that time. I explained to the parties that email is not an acceptable method for service of documents under the *Act*. Therefore, I have not considered the landlords' evidence, which consisted of an email to tenant N.S. and photographic evidence of alleged damage to the rental unit.

Issue(s) to be Decided

Are the tenants entitled to the return of all or a portion of the security deposit? And if so, are the tenants entitled to any statutory compensation due to the landlords' failure to comply with the security deposit requirements of the *Act*?

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

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

The full written tenancy agreement was not submitted into documentary evidence, only a couple of pages were submitted, however, both parties agreed to the following information about the tenancy agreement:

- This tenancy began as a fixed term March 1, 2008 but eventually converted to a month-to-month tenancy.
- At the beginning of the tenancy, the tenants paid the landlords a security deposit of \$387.50, which continues to be held by the landlords.
- The tenancy ended September 30, 2018.
- The tenants provided their forwarding address to the landlords via email which was confirmed received by the landlords by October 4, 2018.

Both parties confirmed that the tenants never provided the landlords with written authorization to deduct any amount from the security deposit.

Landlord Ro.D. testified that the tenants had often paid their rent late throughout the tenancy and damaged the rental unit.

Landlord Ro.D. confirmed that she did not file an application for dispute resolution to retain any portion of the security deposit as she was not aware of this requirement, and because the damages exceeded the amount of the security deposit.

I explained to the parties that the only matter before me for decision at this hearing was to make a determination on the tenants' application for the return of the security deposit, and that any testimony in relation to the alleged damages was not relevant for making a determination in this matter.

I further explained that the *Act* contains statutory provisions which can require that in certain circumstances a landlord must repay a tenant double the security deposit. If a tenant is entitled to doubling of the deposit, I must award the tenant double the deposit unless the tenant expressly waives entitlement. In this matter, the tenants did not waive their entitlement to the doubling provision. Accordingly, I have considered whether the tenants are entitled to the doubling provision in making this decision.

Analysis

The *Act* contains comprehensive provisions on dealing with security deposits. Under section 38 of the *Act*, the landlord is required to handle the security deposit as follows:

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.

...

- (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
- (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

...

- (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.

At no time does the landlord have the ability to simply keep all or a portion of the security deposit because they feel they are entitled to it due to damages caused by the tenant. If the landlord and the tenant are unable to agree to the repayment of the security deposit or to deductions to be made to it, the landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later.

In this matter, the tenancy ended on September 30, 2018, and the landlords received the tenants' forwarding address by October 4, 2018. Therefore, the landlord had 15 days from October 4, 2018, which is the later date, to address the security deposit in accordance with the *Act*.

The tenants did not provide the landlords with any authorization to retain any portion of the security deposit and the landlords failed to file an application for dispute resolution to retain the security deposit as required under section 38 of the *Act*.

Based on the above legislative provisions and the testimony and evidence of both parties, on a balance of probabilities, I find that the landlords failed to address the security deposit in compliance with the *Act*. As such, in accordance with section 38(6) of the *Act*, I find that the tenants are entitled to a monetary award equivalent to the value of double the amount of the security deposit withheld by the landlords, with interest calculated on the original amount only. I find that \$5.42 in interest is payable to the tenants for this period.

As the tenants were successful in their application, I find that the tenants are entitled to recover the \$100.00 filing fee from the landlords.

In summary, I issue a Monetary Order of \$880.42 in the favour of the tenants, explained below:

Item	Amount
Original amount of security deposit paid by tenants	\$387.50
Monetary award equivalent to the amount of the security deposit	\$387.50
Interest payable on only the original amount of security deposit	\$5.42
Recovery of filing fee for this Application	\$100.00
Total Monetary Order in Favour of Tenants	\$880.42

I note that the landlord provided verbal testimony about the issue of damages caused by the tenants; however, the landlord is unable to make a monetary claim through the tenants' Application. The landlords may still file their own Application for compensation for the alleged damages caused by the tenants, however, the issue of the deposit has now been conclusively dealt with in this hearing.

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$880.42 pursuant to sections 38, 67 and 72 of the *Act*.

The tenants are provided with this Order in the above terms and 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 17, 2019

Residential Tenancy Branch