



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 obtain a return of their security and key fob deposits pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 1:41 p.m. in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 p.m. The tenants attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenants and I were the only ones who had called into this teleconference.

The tenants gave sworn testimony and written evidence that they sent the landlord's agent a copy of the tenants' dispute resolution hearing package and written evidence by registered mail on March 28, 2019. They provided the Canada Post Tracking Number and Customer Receipt to confirm this registered mailing. They also entered written evidence that the package was successfully delivered on March 29, 2019. I find that the landlord was deemed served with this material in accordance with sections 88, 89 and 90 of the *Act* on April 2, 2019, the fifth day after the registered mailing.

Issues(s) to be Decided

Are the tenants entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Are the tenants entitled to a return of their key fob deposit from the landlord? Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenants entered into written evidence a copy of the Residential Tenancy Agreement (the Agreement) the parties signed on April 26 and May 1, 2019. This fixed term tenancy was to run from May 1, 2018 until October 31, 2018. At the expiration of the initial term, the tenancy continued as a month-to-month tenancy. Monthly rent was set at \$2,200.00, payable in advance on the first of each month. The tenants maintained that the landlord continues to hold their \$1,100.00 security deposit and a \$200.00 key deposit they paid on April 30, 2018.

The tenants gave undisputed written evidence and sworn testimony that on December 28, 2018, they provided the landlord with their notice to end this tenancy on January 31, 2019. Tenant ML testified that they participated in a joint move-out condition inspection with the landlord's agent on January 31, 2018, at which time they provided the landlord with their forwarding address in writing on the joint move-out condition inspection report that the landlord's agent was preparing. At that time, Tenant ML said that the tenants returned their keys to the rental unit and the key fobs. The tenants gave undisputed sworn testimony and written evidence that the landlord has not provided them with a copy of the joint move-out condition inspection report.

The tenants testified that the landlord has not returned any portion of their security deposit or key fob deposit. The tenants' application for a monetary award of \$2,500.00 included the following:

Item	Amount
Return of Double Security Deposit as per section 38 of the Act (\$1,100.00 x 2 = \$2,100.00)	\$2,200.00
Return of Key Fob Deposit	200.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order Requested	\$2,500.00

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit if the landlord's right to claim against the security deposit have not already been extinguished. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's

provision of the forwarding address. In this case, the landlord had 15 days after January 31, 2019 to take one of the actions outlined above.

Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security deposit if “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.” As there is no evidence that the tenants have given the landlords written authorization at the end of this tenancy to retain any portion of their security deposit, section 38(4)(a) of the *Act* does not apply to the tenants' security deposit.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;*
- *If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*
- *If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;*
- *If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

Based on the undisputed evidence before me, I find that the landlords have neither applied for dispute resolution nor returned the tenants' security deposit in full within the required 15 days. The tenants gave sworn oral testimony that they have not waived their rights to obtain a payment pursuant to section 38 of the *Act* owing as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenants are therefore entitled to a monetary order amounting to double the value of their \$1,100.00 security deposit with interest calculated on the original amount only. No interest is payable.

Based on the tenants' undisputed sworn testimony and written evidence, I also find that the tenants are entitled to a return of their \$200.00 key fob deposit.

Having been successful in this application, I find further that the tenants are entitled to recover the \$100.00 filing fee paid for this application from the landlord.

Conclusion

I issue a monetary Order under the following terms, which allows the tenants to obtain a monetary award of double their security deposit, to obtain a return of their key fob deposit and to recover their filing fee from the landlord:

Item	Amount
Return of Double Security Deposit as per section 38 of the Act ($\$1,100.00 \times 2 = \$2,100.00$)	\$2,200.00
Return of Key Fob Deposit	200.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$2,500.00

The tenants are provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: May 14, 2019

Residential Tenancy Branch