



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 double their security and pet damage deposits (the deposits) pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

The landlords did not attend this hearing, although I left the teleconference hearing connection open until 1:49 p.m. in order to enable the landlords 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 supported by written evidence that they sent the landlords individual copies of their dispute resolution hearing package and written evidence by Canada Post's ExpressPost service requiring a signature from the recipients on April 13, 2019. The tenants provided copies of the Canada Post Tracking Number and Customer Receipt confirming these mailings, which qualify as registered mail for the purposes of the *Act*. The tenants gave undisputed sworn testimony and written evidence that these mailings were returned to them by Canada Post as unclaimed by the landlords on May 13, 2019. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlords were deemed served with these documents on April 18, 2019, the fifth day after their mailing.

Issues(s) to be Decided

Are the tenants entitled to a monetary award equivalent to double the value of their deposits as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*? Are the tenants entitled to recover the filing fee for this application from the landlords?

Background and Evidence

On September 7, 2014, the parties signed a month-to-month Residential Tenancy Agreement (the Agreement), a copy of which the tenants entered into written evidence, that enabled the tenants to move into this rental unit on October 1, 2014. According to the terms of the Agreement, monthly rent was initially set at \$900.00, payable in advance by the first of each month, plus 20% of the utility bills for this property. The tenants paid the landlords a security deposit of \$450.00 and a pet damage deposit of \$225.00 on September 7, 2014, when the tenants signed the Agreement. The tenants maintained that the landlords have not returned any portion of these deposits. The tenants gave sworn testimony that they paid a second pet damage deposit of \$225.00 in mid-2017, when they acquired an additional pet. Although pet damage deposits are limited to one-half of the monthly rent, there is undisputed sworn testimony that the tenants paid this additional pet damage deposit, which they also alleged has not been returned to them by the landlords.

The tenants gave undisputed sworn testimony that on January 29, 2019, they mailed the landlords their notice to end this tenancy by February 28, 2019. They entered into written evidence a copy of this notice to end this tenancy. The tenants testified that they surrendered possession of the rental unit to the landlords by February 28, 2019.

The tenants entered into written evidence a copy of the document they provided to the landlords on March 18, 2019 by a Canada Post service requiring the landlords' signature upon receipt of that letter. This letter advised the landlords of their forwarding address for the return of their deposits. At that time, they requested copies of any outstanding utility bills which may have been issued following their ending this tenancy. The tenants also entered into written evidence a copy of the Canada Post Online Tracking document which revealed that the tenants' March 18, 2019 letter had been successfully delivered to the landlords on March 21, 2019. This document also included a copy of Landlord MM's signature confirming receipt of the tenants' letter. When the landlords neither returned the tenants' deposits nor provided them with copies of any outstanding utility bills arising from this tenancy, the tenants applied for dispute resolution for a return of double their deposits on April 11, 2019.

In their application for a monetary award of \$1,800.00, the tenants maintained that they were entitled to a return of double the value of their deposits as the landlords had failed to return all of their deposits within 15 days of having received the tenants' forwarding address and had not applied for dispute resolution for authorization to retain their deposits. They also applied for the recovery of their filing fee from the landlords.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenants to prove on the balance of probabilities that the landlords have contravened section 38 of the *Act*,

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 tenants' deposits in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain these deposits. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposits, and the landlord must return the tenant's deposits plus applicable interest and must pay the tenant an additional monetary award equivalent to the original value of the deposits (section 38(6) of the *Act*). With respect to the return of the deposits, 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 landlords had 15 days after March 23, 2019, the date when they were deemed to have received the tenants' forwarding address in writing (section 90 of the *Act*) to either return the tenants' deposits in full or apply to the RTB for authorization to keep any portion of these deposits.

The following provisions of Policy Guideline 17 of the RTB'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' deposits 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 landlords' 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 deposits with interest calculated on the original amount only. No interest is payable.

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

Conclusion

I issue a monetary Order in the tenants' favour in the amount of \$1,900.00 under the following terms, which allows the tenants to obtain a monetary award equivalent to double the value of their deposits, plus their recovery of their filing fee for this application:

Item	Amount
Return of Double Security Deposit and Pet Damage Deposits as per section 38 of the <i>Act</i> (\$450.00 + \$225.00 + \$225.00) x	\$1,800.00

2 = \$1,800.00)	
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$1,900.00

The tenants are provided with these Orders in the above terms and the landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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: July 15, 2019

Residential Tenancy Branch