



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ASCENT REAL ESTATE MANAGEMENT and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FFT

Introduction

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

- authorization to obtain a return of double the amount of the tenants' security and pet damage deposits (collectively "deposits"), pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The "male tenant" did not attend this hearing, which lasted approximately 36 minutes. The landlord's two agents, landlord MC ("landlord") and "landlord AD," and the female tenant ("tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord's two agents confirmed that they had permission to represent the landlord company named in this application, at this hearing. The tenant confirmed that she had permission to represent the male tenant at this hearing.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application.

The landlord stated that she did not serve the landlord's written evidence package to the tenants, she only uploaded it to the RTB online system on August 13, 2019. The tenant confirmed that she did not receive any written evidence from the landlord. I informed both parties that I could not consider the landlord's written evidence at the hearing or in my decision because it was not served to the tenants, as required.

Issues to be Decided

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

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

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on July 1, 2015 and ended on December 15, 2018. Monthly rent in the amount of \$1,832.00 was payable on the first day of each month. A security deposit of \$850.00 and a pet damage deposit of \$850.00 were paid by the tenants. A written tenancy agreement was signed by both parties. The landlord did not have any written permission to keep any part of the tenants' deposits. The landlord did not file an application for dispute resolution to retain any amount from the tenants' deposits.

The landlord stated that move-in and move-out condition inspection reports were completed for this tenancy. She said that the tenant signed the move-in condition inspection report. The tenant disputed signing or being present for the move-in condition inspection report. Both parties agreed that the tenants were not present for the move-out condition inspection report.

The tenant stated that she provided a forwarding address in writing by way of a letter, dated November 10, 2018, which was handed to the landlord and witnessed by the tenant's sister. The tenant provided a witness statement from her sister. The landlord maintained that she did not receive the forwarding address letter from the tenant. She said that the document could not have been drafted or given on November 10, 2018, as the document was printed on January 24, 2019, noted at the bottom right corner of the page, and then handwritten with the forwarding address and other information. The landlord said that only received an address on the tenants' application for dispute resolution.

The landlord stated that she sent \$1,916.00 by way of e-transfer to the tenants, which was a refund of \$916.00 for half a month's rent for December 2018 and \$1,000.00 from

both deposits. The tenant agreed that she received the e-transfer for \$1,916.00 and that she received \$1,000.00 back from her deposits. The tenant then claimed that she only received an e-transfer for \$1,866.00 and the landlord retained \$750.00 from her deposits and returned \$950.00, not \$1,000.00, while the remaining amount was a rent refund. The tenant stated that she did not have her documents in front of her during the hearing and she did not have access to her bank records or her e-transfer information, so she calculated everything herself during the hearing.

The tenants seek a return of double the amount of the deposits that the landlord has retained of \$750.00, totalling \$1,500.00, plus the \$100.00 application filing fee. The landlord disputes the tenants' application.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenants' deposits or file for dispute resolution for authorization to retain the deposits, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposits. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the deposits to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings on a balance of probabilities. The tenancy ended on December 15, 2018. The tenants did not give the landlord written permission to retain any amount from their deposits. The landlord did not return the full deposits or make an application for dispute resolution to claim against the deposits.

I find that the tenants provided a written forwarding address by way of this application for dispute resolution. I do not accept that the forwarding address was given on November 10, 2018 because the tenants' own document indicates that it was printed out on January 24, 2019, and then handwritten information was added and dated for November 10, 2018. The tenant did not even have this document in front of her during the hearing, to confirm the correct information. Although the landlord received the tenants' forwarding address, it was not served in accordance with section 88 of the *Act*, as an application is not a proper service method for a forwarding address. Therefore, I find that the doubling provision has not been triggered.

Accordingly, I find that the tenants are entitled to the return of their original deposits totaling \$1,700.00, minus the \$1,000.00 portion already returned to them, for a balance of \$700.00. There is no interest payable on the deposits during the period of this tenancy. I find that \$1,000.00 was returned to the tenants by the landlord because the landlord provided consistent, forthright testimony about the \$1,916.00 e-transfer, as half the amount was returned for rent of \$916.00, which is half of \$1,832.00 monthly rent, with the other \$1,000.00 portion being the deposits return. The tenant agreed with this initially and then disputed it later. The tenant did not have any of her documents in front of her during the hearing in order to confirm the e-transfer amount and changed her testimony during the hearing, as she was unsure of the amounts.

As the tenants were only partially successful in this application, I find that they are not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of \$700.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord 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: August 27, 2019

Residential Tenancy Branch