



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

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

- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the tenants served the landlord with the notice of hearing package in person. The tenants also claim that the landlord was served with the submitted documentary evidence in person with the notice of hearing package. The landlord disputed this stating that no documentary evidence was included. The tenants state that they had a witness (their son), but that he was unavailable for the hearing. Both parties confirmed the landlord served the tenants with her submitted documentary evidence via Canada Post Registered Mail on September 23, 2019. I accept the undisputed testimony of both parties and find that both parties have been sufficiently served as per sections 88 and 89 with the tenants' notice of hearing package and the landlord's submitted documentary evidence. On the tenants' documentary evidence, I find that the tenants have failed to provide sufficient evidence to satisfy me that the landlord was served with their submitted documentary package. As such, the tenants' documentary evidence package is excluded from consideration in this hearing. Both parties were advised that if relevant to the tenants, they may make verbal reference to the documents during the hearing and that a finding could be made on how much weight could be attached to that evidence in regards to their claims. No references were made during the hearing.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for return of double the security deposit and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on September 1, 2018 on a fixed term tenancy ending on August 31, 2019 as per the signed tenancy agreement dated July 19, 2018. The monthly rent was \$2,600.00 payable on the 1st day of each month. A security deposit of \$1,300.00 was paid on July 19, 2018.

The tenants seek a clarified monetary claim of \$2,700.00 which consists of:

\$1,300.00	Return of Original Security Deposit
\$1,300.00	Compensation, Sec. 38(6) Landlord Fail to Comply
\$100.00	Filing Fee

Both parties confirmed that the tenancy ended on May 31, 2019. Both parties confirmed that as of the date of this hearing, the landlord holds the tenants' \$1,300.00 security deposit.

Discussions during the hearing resulted in the tenants stating that their forwarding address in writing was not provided to the landlords until after their application for dispute was filed with the Residential Tenancy Branch and filed as part of their documentary evidence package.

The landlord confirmed in her direct testimony that at no time did the landlord receive the tenants' forwarding address in writing for return of the \$1,300.00 security deposit. The landlord in fact claims that because she did not have the tenants forwarding address, she had arranged for the tenants to pick up a cheque for the original \$1,300.00 at one of their office(s). During the hearing the landlord made references to two screenshots of text messages between the two parties. The landlord stated that she inferred based upon these messages that the tenants would attend to pick up the cheque for their security deposit.

The tenants argued that this was in fact true, but that when the tenants attended to pick up the package, the landlord or their agents refused to return it unless the tenants signed a mutual agreement to end tenancy.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

In this case, both parties confirmed that the tenancy ended on May 31, 2019 and the landlord holds the tenants' \$1,300.00 security deposit.

I make a finding that the tenants have failed to provide their forwarding address in writing for the return of the \$1,300.00 security deposit. The tenants provided direct testimony that at no time was the landlord served with it prior to the submissions of the tenants' documentary evidence. I also note that the tenants have been unable to provide sufficient evidence of any proof of service of said documents for the hearing as the landlord has disputed that she did not receive it. Although the tenants failed to provide their forwarding address in writing for return of the security deposit, I find on this portion of the claim that the tenants are entitled to return of the original \$1,300.00 security deposit despite this as the landlord has not filed for dispute in returning it and the tenancy has ended.

On the second part of the tenants' claim, I find that the tenants have failed to provide sufficient evidence of service for the tenants' forwarding address in writing for return of the security deposit as required in section 38(1). As such, the tenants have failed to provide sufficient evidence to satisfy me that a breach occurred and that section 38 (6) applies. This portion of the tenants' application is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period. However, I put the landlord on notice that if the landlord fails to return the \$1,300.00 security deposit within 15 days of the date of this decision that the tenant may apply for compensation under section 38 (6) of the Act. The landlord has confirmed that she does now have the tenants mailing address as confirmed in the Residential Tenancy Branch File.

The tenants having been partially successful are entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenants are granted a monetary order for \$1,400.00.

This order must be served upon the landlord. Should the landlord fail to comply with the order, the 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: October 07, 2019

Residential Tenancy Branch