



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FFT

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act). The tenants applied for monetary order for the return of double their security deposit plus the filing fee.

Tenants KH and HP (tenants) attended the teleconference hearing. The tenants gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions during the hearing.

As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding (Notice of Hearing), the application and documentary evidence were considered. The tenants provided affirmed testimony that the Notice of Hearing, application and documentary evidence were served on the landlord by registered mail on October 31, 2019. The tenants provided a registered mail tracking number in evidence and confirmed that the name and address on the registered mail package matched the name of the landlord and the address provided by the landlord. For ease of reference, the registered mail tracking number has been included on the cover page of this decision.

According to the Canada Post online registered mail tracking website, the landlord did not pick up the registered mail package and it was marked as unclaimed and returned to sender. Section 90 of the Act states that documents served by registered mail are deemed served five days after they are mailed. As a result, I find the landlord was served as of November 5, 2019.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issues to be Decided

- Are the tenants entitled to the return of double their security deposit under the Act?
- Are the tenants entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The tenants paid a security deposit of \$700.00 in December 2018. The tenants stated that they vacated the rental unit on August 31, 2019. The tenants stated that they provided their written forwarding address to the landlord by registered mail on September 24, 2019. A second registered mail tracking number was submitted in evidence and has also been included on the cover page of this decision for ease of reference. The tenants stated that the written forwarding address was mailed to the mailing address of the landlord and was also returned to sender and marked “unclaimed”.

The tenants testified that the landlord has not returned any amount of their \$700.00 security deposit and confirmed that they did not provide permission for the landlord to retain any portion of their security deposit. The tenants also provided a photograph in evidence of the written forwarding address and the envelope that the written forwarding address was inside.

The tenants are seeking the return of double their security deposit plus the filing fee.

Analysis

Based on the above, and the undisputed documentary evidence and undisputed testimony of the tenants, and on a balance of probabilities, I find the following.

The tenants confirmed that they did not provide permission for the landlord to retain any portion of their \$700.00 security deposit. I am also satisfied that the tenants provided their written forwarding address by registered mail on September 24, 2019, which I find was deemed served pursuant to section 90 of the Act five days later on September 29, 2019.

I accept the tenants undisputed testimony that the landlord has not returned any amount of their security deposit. As a result, section 38 of the Act applies and states:

Return of security deposit and pet damage deposit

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.

(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.

[Emphasis added]

Based on the above, I find the landlord has breached section 38 of the Act by failing to return or claim against the tenants' security deposit. In reaching this finding I have considered that there is no evidence before me that the landlord applied to return the tenants' security deposit or had written permission to retain any amount of the security deposit.

The security deposit is held in trust for the tenants by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an arbitrator, or the written agreement of the tenants. In the matter before me, I find the landlord did not have any authority under the Act to keep any portion of the security deposit and did not return the security deposit to the tenants within 15 days of September 29, 2019 as required by the Act.

Section 38(6) of the Act provides that if a landlord does not comply with section 38(1), the landlord must pay the tenants **double** the amount of the security deposit. The legislation does not provide any flexibility on this issue.

As a result, I find the tenants have met the burden of proof and I grant the tenants **\$1,400.00**, which is double their original \$700.00 security deposit, pursuant to section 67 of the Act. In addition, I grant the tenants **\$100.00** pursuant to section 72 of the Act, for the filing fee. Given the above, I find the tenants have established a total monetary claim of **\$1,500.00**.

Conclusion

The tenants' application is fully successful.

I caution the landlord not to breach section 38 of the Act in the future.

The tenants are granted a monetary order in the amount of \$1,500.00 comprised of the \$1,400.00 doubled security deposit, and the \$100.00 filing fee. The monetary order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

As the tenants were able to provide an email address for the landlord during the hearing, the decision will be emailed to the parties. The monetary order will be emailed to the tenants only for service on the landlord.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 23, 2019

Residential Tenancy Branch