Dispute Resolution Services

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 their security deposit under the Act and to recover the cost of the filing fee.

Tenant MK (tenant) attended the teleconference hearing and was affirmed. The hearing process was explained to the tenant and the tenant provided affirmed testimony. The tenant was 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 dated September 12, 2019 (Notice of Hearing), the application and documentary evidence were considered. The tenant provided affirmed testimony that the Notice of Hearing, application and documentary evidence were served on the landlord by personal service at the landlord's residence on September 13, 2019, and was witnessed by JL (witness). The tenant testified that they served the landlord with a package containing the Notice of Hearing and application and that the landlord accepted the package from the tenant. Based on the evidence before me I accept that the landlord was personally served as required under the Act on September 13, 2019. As a result, I find this matter is undisputed by the landlord and the hearing proceeded without the landlord present.

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

Preliminary and Procedural Matters

During the hearing, the tenant stated that although they wrote on their application that their security deposit was $450.00, that amount was a typographical error and should have read $475.00. The tenant was advised that I would not permit the tenants to correct the amount to $475.00 as the amount of $450.00 was listed on the application served on the landlord. I find that in the interests of fairness to the landlord and considering that the tenants failed to amend their application to state $475.00, I do not grant the tenants the ability to amend their application at the hearing, as that would prejudice the landlord. The tenant stated that they were not waiving their right to double the return of their security deposit if they were so entitled under the Act.

In addition, the tenant confirmed their email addresses during the hearing. The tenant was advised that the decision would be emailed to the tenants and sent by regular mail to the landlord as an email address was not provided for the landlord in the application.

Issues to be Decided

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

Background and Evidence

A copy of the tenancy agreement was not submitted in evidence. The tenant testified that they were unable to locate a copy of the tenancy agreement. The tenant affirmed that the tenancy began on December 1, 2007 and ended on September 1, 2017, when the tenants vacated the rental unit. The tenant testified that the monthly rent was $950.00 per month originally, and by the end of the tenancy was $985.00 per month. The amount of the security deposit listed on the application as indicated above was $450.00.

The tenant testified that they provided their written forwarding address to the landlord in person on June 20, 2018 at the landlord's residence, by placing the tenants' written forwarding address in the landlord's mailbox next to the landlord's door. The tenant provided a copy of their written forwarding address, which is consistent with their testimony. The tenant testified that the landlord was not given written or verbal permission to retain any portion of their security deposit and the landlord has not returned any portion of the security deposit.
The tenant applied on September 1, 2019, which was the last possible date the tenant could apply for dispute resolution under the Act, which I will address later in this decision.

Analysis

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

Firstly, section 60(1) of the Act applies and states:

> **Latest time application for dispute resolution can be made**
>
> **60**(1) If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.

Based on the above and considering that the tenancy ended on September 1, 2017, I find the tenants filed their application on the last possible date, September 1, 2019.

Secondly, as the tenancy began on December 1, 2007, I find the $450.00 security deposit has accrued interest in the amount of $7.33 pursuant to the Act and regulation. Therefore, I find the landlord is currently holding a security deposit of $457.33.

Thirdly, I accept the tenant's undisputed testimony that they did not agree, in writing, that the landlord could retain any portion of the security deposit, which has accrued $7.33 in interest to date. In addition, I find there was also no evidence to support that the landlord had applied for dispute resolution within 15 days of the end of the tenancy or receipt of the forwarding address of the tenants, to retain any portion of the security deposit.

Section 90 of the Act applies and states that documents placed in the mailbox of the respondent are deemed served three days after they are placed. Furthermore, I am satisfied that the landlord was deemed served with the written forwarding address of the tenants on June 23, 2018, which is three days after June 20, 2018. Therefore, I find the landlord breached section 38 of the Act by failing to return the tenants' $457.33 security deposit including interest no later than 15 days after June 23, 2018 or at the very least, apply for dispute resolution claiming towards 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 June 23, 2018 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 that the landlord owes the tenants **$900.00**, which is double the tenants' $450.00 security deposit. I do not double the interest of $7.33 as the Act does not provide for such.

As the tenants' application was fully successful, I grant the tenants **$100.00** for the recovery of the cost of the filing fee pursuant to section 72 of the Act.

Given the above, I grant the tenants a monetary order pursuant to section 67 of the Act in the amount of **$1,007.33.** This amount is comprised of $900.00 for the doubled security deposit, $100.00 for the filing fee and $7.33 for the interest on the original security deposit.

Conclusion

The tenants' application is fully successful.

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

The tenants are granted a monetary order in the amount of $1,007.33 as indicated above. 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.

This decision will be emailed to the tenants and sent by regular mail to the landlord. 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: January 16, 2020

Residential Tenancy Branch