



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

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

- a monetary order for the return of the security deposit, pursuant to sections 38(1) and 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72(1) of the *Act*.

The landlord VV, and both tenants CB & NW attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were in attendance, I confirmed that there were no issues with service of the tenant's application for dispute resolution and evidence. I find that the landlord was duly served with the tenant's application and evidence, in accordance with sections 88 and 89 of the *Act*.

Issues to be Decided

1. Are the tenants entitled to a monetary order for the return of the security deposit, pursuant to sections 38 of the *Act*?
2. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

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

The parties agreed that this tenancy began on March 1, 2019, and that the tenancy ended on August 31, 2019.

The parties agree to the following facts. Monthly rent in the amount of \$1200.00 was payable on the 1st day of each month. A security deposit of \$600.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by the parties. Tenant NW testified that they did not receive a copy of the signed tenancy agreement.

Tenant NW testified that she sent the landlord her forwarding address via registered mail on September 5, 2019. A Canada Post registered mail receipt evidencing same was entered into evidence. The landlord testified that he did not receive the forwarding address as he was hospitalized. The landlord failed to provide evidence of his hospitalization. All parties agree that the landlord did not return any of the tenants' security deposit.

Tenant NW testified that she did not provide the landlord with written authorization to retain any portion of her security deposit and submitted that she left text messages with the landlord to undertake the move-out condition inspection report in the last week of August 2019. NW testified that she did not receive a response to her text messages, subsequently they cleaned the rental unit and took several photographs which are submitted into evidence.

The landlord testified that he did not file an application with the Residential Tenancy Branch to retain any portion of the tenants' security deposit. The landlord testified that he did not return the tenants' security deposit because he believed that the tenants had moved back to Ireland.

Tenant CB testified that he had moved back to Ireland, but tenant NW still resided in Vancouver British Columbia and that the landlord had been sent the forwarding address in Vancouver by text messages and by registered mail on September 5, 2019.

Analysis

Section 38 of the Act requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing.

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.

However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit 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 find that the landlord has not proved, on a balance of probabilities, that the tenants agreed in writing for the landlord to retain any portion of their security deposit as no evidence to support the landlord's testimony was entered into evidence. Therefore, the landlord is required to pay double the value of the security deposit pursuant to section 38(6) of the Act.

Section 38 (6) of the Act states:

- 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.

Section C(3) of Residential Tenancy Branch Policy Guideline 17 states that 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.

Based on the testimony of both parties and the registered post receipt entered into evidence, I find that the landlord was deemed served with the tenant's forwarding address in writing on September 5, 2019, five days after it's registered mailing, in accordance with sections 88 and 90 of the *Act*.

Based on the evidence of both parties, I find that the landlord did not return the tenants' security deposit within 15 days of the landlord's receipt of the forwarding address in writing. Based on the landlord's testimony, I find that the landlord did not file an application with the Residential Tenancy Branch to retain the tenants' security deposit within 15 days of receiving the tenant's forwarding address in writing. Therefore, pursuant to section 38 (6) of the *Act* and Residential Tenancy Branch Policy Guideline 17, I find the tenants are entitled to receive double the security deposit.

As the tenants were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Award	
Security Deposit	\$600
Doubling provision	\$600
Filing Fee	\$100
Total Award	\$1,300

Conclusion

I grant the tenants a monetary order pursuant to section 38 and 72 of the *Act* in the amount of \$1,300.00 as described above.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file, the order in the Provincial Court (Small Claims) to be 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: February 3, 2020

Residential Tenancy Branch