



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

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 deposit, pursuant to section 38.

The landlord, the landlord's lawyer, the landlord's lawyer's assistant, the two tenants, and the tenants' advocate attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. This hearing lasted approximately 26 minutes.

The landlord confirmed that his lawyer had permission to speak on his behalf. The landlord's lawyer confirmed that his assistant had permission to assist at the hearing. The two tenants confirmed that their advocate had permission to speak on their behalf.

The landlord's lawyer confirmed receipt of the tenants' application for dispute resolution hearing package and the tenants' advocate confirmed receipt of the landlord's evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application and both tenants were duly served with the landlord's evidence package. The tenants' advocate confirmed that she had no objections to the landlord's evidence package being considered at the hearing or in my decision, even though she said she received it late by email.

Issue to be Decided

Are the tenants entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 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 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 October 15, 2017. Monthly rent in the amount of \$1,000.00 was payable on the first day of each month. A security deposit of \$500.00 was paid by the tenants and the landlord retained \$200.00 and returned \$300.00 to the tenants. The tenants returned the landlord's cheque for \$300.00 to the landlord, without cashing it. A written tenancy agreement was signed by both parties. A move-in condition inspection report was completed for this tenancy. No move-out condition inspection report was completed for this tenancy. The landlord did not provide an RTB form "Notice of Final Opportunity to Schedule a Condition Inspection" to the tenants for the move-out condition inspection. The landlord received a written forwarding address from the tenants, by way of a note, left for the landlord on August 31, 2019. The landlord did not file an application for dispute resolution to retain any amount from the tenants' security deposit. The landlord did not have written permission to keep any amount from the tenants' security deposit.

The tenants' advocate stated that the tenants vacated the rental unit on August 31, 2019. The landlord's lawyer said that the tenants vacated on September 1, 2019. The landlord's lawyer stated that the tenants failed to participate in a move-out condition inspection with the landlord, despite numerous calls and efforts to arrange a date and time. The tenants disputed this, stating that the landlord did not try to contact them to conduct a move-out condition inspection.

The landlord said that the tenants did not tell him when they were moving out, he lived upstairs at the time, and they left the door wide open with the keys inside when they vacated. The tenants claimed that they did not leave the door wide open, the landlord was not living upstairs at the time, and the landlord knew when they were vacating or he could have asked them.

The tenants seek a return of double the amount of their security deposit of \$500.00, totalling \$1,000.00. The landlord disputes the tenants' application.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenants' 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 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 deposit. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the 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)).

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony and evidence of both parties. The tenancy ended by September 1, 2019. The tenants provided a written forwarding address by way of a note on August 31, 2019, which was received by the landlord. The tenants did not give the landlord written permission to retain any amount from their security deposit. The landlord did not return the full deposit or make an application for dispute resolution to claim against the deposit within 15 days of the end of tenancy or forwarding address date.

I do not find that the tenants extinguished their right to the return of the security deposit. I find that the landlord did not provide the tenants with a second opportunity to conduct a move-out inspection by using the required RTB-approved form, as per section 17(2)(b) of the *Residential Tenancy Regulation*. Therefore, I find that the landlord extinguished his right to retain the security deposit for damages, as per section 36 of the *Act*, for failure to provide two opportunities for a move-out condition inspection and for failure to complete a move-out condition inspection report.

In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenants are entitled to receive double the value of their security deposit of \$500.00, totalling \$1,000.00. There is no interest payable on the deposit during the period of this tenancy. The tenants affirmed that they returned the landlord's cheque for \$300.00 and the landlord did not dispute this.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of \$1,000.00 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: March 17, 2020

Residential Tenancy Branch