



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This is an application by the tenants) filed under the Residential Tenancy Act (the “Act”) for a monetary order for return of double the security deposit (the “Deposit”), and to recover the filing fee for the claim.

Preliminary and procedural matters

The **tenants** attended the hearing. As the **landlords** did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that **the** respondents must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The tenants testified that the landlords live in Australia and the only contact they have had with the landlords was by email or text messaging. The tenants stated the only service address they have for the landlords is the rental property. This was listed in the tenancy agreement and one of the other tenants was responsible to collect the landlords mail. . The tenants stated that they have also provide a copy of the landlord title document for the said property and it shows that address as the service address.

The tenants testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on November 20, 2019, **a** Canada post tracking number **was** provided as evidence of service. The tenants stated that the package was returned unclaimed.

In this case, I am satisfied that the service address for the landlords was the rental unit; although I accept the landlords were not living there at that time; however, this was the address for service the landlords used in their tenancy agreement. Therefore, I find the landlords were deemed served in accordance with Section 90 of the Act .

The tenants appeared, gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

Are the tenants entitled to a monetary order for return of double the Deposit)?

Background and Evidence

The tenancy began on September 1, 2018. Rent in the amount of \$3,000.00 was payable on the first of each month. A security deposit of \$3,000.00 was paid by the tenants. The tenancy ended on August 31, 2019.

The tenants stated that they paid a security deposit that was greater than the Act allowed, because the landlords stated the Residential Tenancy Act is ridiculous when renting property that is in excess of one million dollars. The tenants stated they paid the security deposit as they needed a place to rent.

The tenants testified that they vacated the premises on August 31, 2019. The tenants stated that they provided the landlords with a written notice of the forwarding address on September 3, 2019, by email. As the landlords had also provided an email address for service in the tenancy agreement. The tenants stated that the landlords told them they would not be getting their security deposit back; however, never gave any explanation and has now cut off all contact.

The tenants testified that because the landlords do not live in Canada, they believe they can just ignore the Act.

The tenants stated they did not authorize the landlords to retain any amount from the Deposit and there were no orders made that authorized the landlords to retain any amount from the Deposit.

Filed in evidence are:

- A copy of a land title document shows the owners of the rental property. This also shows the address for service of documents is that of the rental unit;

- A copy of an unsigned tenancy agreement. The tenants stated they provided the landlords with a signed copy, but the landlords did not send any copy back.
- A copy of the email, showing the tenants sent their forwarding address to the landlords, which was noted as one of the service addresses in the tenancy agreement.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Return of security deposit and pet damage deposit is defined in Part 2 of the Act.

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.

...

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
- (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(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.

In this case, there was no evidence that the landlords had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address, which was given on September 3, 2019. While email is not an approved method of service under the Act, I am satisfied that the landlords provided an email address for service in the tenancy agreement. I find the tenants had the right to rely upon the email address for service. Therefore, I find the landlords were served in accordance with the Act.

I accept the undisputed testimony of the tenants that they did not agree in writing that the landlords may retain any amount from the security deposit.

I find the landlords have breached section 38(1) of the Act.

The security deposit is held in trust for the tenants by the landlords. At no time do the landlords have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlords may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator. Here the landlords did not have any authority under the Act to keep any portion of the Deposit.

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

Therefore, I must order, pursuant to section 38 of the Act, that the landlords pay the tenants the sum of **\$6,100.00**, comprised of double security deposit (\$3,000.00) on the original amount held and to recover the \$100.00 fee for filing this Application.

The tenants are given a formal monetary order pursuant to 67 of the Act, in the above terms. The landlords must be served with a copy of this order as soon as possible.

I authorize the tenants to serve the above order by email at the email address noted on the covering page of this decision.

Should the landlords fail to comply with this order, the order may be filed in the small claims division of the Provincial Court and enforced as an order of that court. The **landlords are cautioned** that costs of such enforcement are recoverable from the landlords.

Conclusion

The tenants' application for return of double the Deposit is granted. The tenants are granted a monetary order in the above noted amount.

his 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: April 1, 2020

Residential Tenancy Branch