



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT, MNDST**

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 and pet damage deposit and to recover the filing fee for the claim.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

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 Deposits?

Background and Evidence

The tenancy began on November 1, 2014. Rent in the amount of \$1,782.00 was payable on the first of each month. A security deposit of \$825.00 and pet damage of \$825.00 (the “Deposits”) were paid by the tenants.

The tenants testified that the landlord was given their forwarding address at the move-out condition inspection that was done on December 31, 2017. The tenants stated that they agreed that the landlord could keep \$35.00. The tenants stated that the landlord returned \$1,000.00 on January 17, 2018, and the balance of \$615.00 on January 18, 2018, which was three days late.

The male landlord testified that they had their agent conduct the move-out condition inspection report. The landlord stated that it was not until January 13 or 14th that they came to an agreement with the tenants on cost of the damage to the refrigerator tray.

The male landlord testified that they were unable to return the tenants' security deposit on that day because they were returning it by e-transfer, and they were unsure how to do this and had to wait for assistance from his wife. The landlord stated they returned \$1,000.00 on the 17th as that was the limit allowed for retransfers and they had to wait until the 18th to return the balance. The landlord stated that suffer from a mental illness which impact their abilities.

Counsel for the landlord submit that the tenants admitted they did not attend the move-out inspection. Counsel submits that the tenants sent an agent, the tenants' daughter; however, they did not give the landlord advance notice that they were sending an agent as required by section 15 of the Residential Tenancy Regulations.

Counsel for the landlord submits that the time limit should be extended for the return of the Deposits, pursuant to section 66 of the Act, as the landlord suffers from a mental illness. Counsel submits that the landlord was three days late and it would be an unfair enrichment to the tenants. Counsel submits that the tenants unreasonably delay their application by 23 months.

The tenants argued that they participated in the move-out condition inspection over the telephone and had their daughter present at the rental unit to sign the report on their behalf. The tenant stated that their daughter also lived in the rental unit. The tenant stated that they fully participated and had conversation with the landlord's agent at the time the inspection was being conducted.

Analysis

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

Part 1 of the Act, definition, states as follows:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the **owner's agent** or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

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.

I accept the tenants did not give the owner advance notice that they would be having their daughter act as agent to complete the move-out condition inspection. However, the landlords sent an agent to act on their behalf, an agent is defined as the landlord under the Act.

The landlord's agent completed the move-out condition with the tenant's daughter, while the male tenant was on the telephone. If the agent for the landlord was not accepting that the tenant's daughter as their agent, they should have addressed that issue prior to conducting the move-out condition inspection, which there was no evidence that this was a concern at the time. The landlord's agent did not attend the hearing to provide testimony on this issue.

The move-out condition inspection report was completed and signed by the tenant's daughter with the instruction from the male tenant, who was participating by telephone. I find the tenants had the right to rely upon the actions of the landlord's agent. Therefore, I am satisfied that the landlord's agent accepted the tenant's daughter as the tenants' agent.

In this case, the tenants agreed that the landlord could keep \$35.00 from the Deposits. The landlords had the tenants forwarding address on December 31, 2017. Whether the landlords received that address from their agent on a later date, that is an issue between the landlord and their agent; this does not give the landlord extra time to comply with section 38 of the Act.

The landlords returned the tenants Deposit in full on January 18, 2018, by etransfer. I find that was not within the statutory time limits. Counsel submits that section 66 of the Act should be considered to extend the time limit for the return of the Deposits. While I accept the male landlord did not know how to send an etransfer, due to mental health issues. However, the male landlord knew this on January 14th, and could have sent it by regular mail, meeting the statutory requirement under the Act or have the female landlord complete the etransfer transaction, as both landlords are equally responsible to ensure they comply with the section 38 of the Act. I am not satisfied that there was an exceptional circumstance that prevented the landlords for meeting their statutory requirements under the Act, such as they were in the hospital at the time. I find it would be unreasonable to grant an extension of time. Therefore, I find the landlords have breached section 38 of the Act, when the Deposits were not returned within 15 days of the tenancy ending.

While I accept counsel submission that the tenants likely did not suffer a hardship by their Deposits being returned 3 days late; however, that is not for me to considered as section 38(6) of the Act does not give me the discretion to consider this issue. Further, while I accept 23 months delay in making their application is long; however, it was made within the statutory time limits under the Act.

As I have found the landlords have breached section 38 of 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 Deposits. 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 **\$3,400.00**, comprised of double the Deposits and the \$100.00 for filing the application.

That amount will be reduced by \$35.00, which the tenants agreed the landlords could keep. At the hearing the tenant stated that \$1,615.00 was returned; however, their application stated the amount of \$1,635.00 was returned. Therefore, I find a further reduction of \$1,635.00, is appropriate. Therefore, I find the tenants are entitled to a monetary order in the amount of **\$1,730.00**.

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

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: May 26, 2020

Residential Tenancy Branch