



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and affirmed testimony. Both parties confirmed the tenants served the landlord with the notice of hearing package via Canada Post Registered Mail. Both parties confirmed the tenants served the landlord with the submitted documentary evidence in person on May 14, 2020. The landlord stated that three documentary evidence package(s) were submitted. A review of the Residential Tenancy Branch database shows only two submission by the landlord on May 12, 2020 and May 21, 2020. The landlord clarified that the third missing package was submitted to the Residential Tenancy Branch on May 4, 2020. Both parties confirmed that the landlord served the tenants with this third missing package via Canada Post Registered Mail on May 4, 2020 which the tenants received on May 8, 2020. The landlord stated that the first documentary evidence package was attempted serve on May 12, 2020 when the landlord attended the tenants' mailing address to be told that the tenants no longer reside there and that mail would not be accepted. The tenants confirmed that they were residing at this address and moved approximately 1 week prior. The tenants confirmed that they did not file an amendment changing their service address, but that in the tenants's evidence submission a new address was provided. The landlord provided testimony that the second evidence package was evidence of attempting to serve the landlord's first documentary evidence package, namely video.

Based upon the above evidence, I find that both parties have been sufficiently served with the notice of hearing package. The landlord is deemed properly served with the tenants' documentary evidence. The tenants are deemed sufficiently served with the landlord's first documentary evidence package as the tenants failed to file an amendment changing their mailing address. Although the tenants are deemed served as per section 90 of the Act, the tenants would be given as much detail of possible to any documentary evidence referred to by the landlord and given an opportunity to respond. At the conclusion of the hearing the landlord did not make any references to any documentary evidence submitted by the landlord. Neither party raised any other service issues.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for return of all or part of the security deposit and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenants seek a monetary claim of \$700.00 which consists of:

\$600.00	Return of Original Security Deposit
\$100.00	Filing Fee

The tenants stated that the tenancy ended on September 30, 2019 and that the landlord was provided with their forwarding address in writing for return of the \$600.00 security deposit on December 10, 2019 via Canada Post Registered Mail.

The landlord confirmed that the tenancy ended on September 30, 2019 and that the landlord currently still holds the \$600.00 security deposit. The landlord argued that the tenant's forwarding address in writing (letter) was not received via Canada Post Registered Mail but was received via text message.

The tenants referred to the submitted documentary evidence, "Notice 1" a letter dated December 10, 2019 addressed to the landlord which requests the return of the security deposit and to send it to their forwarding address by December 29, 2019. The tenants also referred to "Registeredmail" a photograph of the sealed envelope with the landlord's mailing address. The tenant further stated that an online search of the Canada Post Website shows that the package was accepted and signed in receipt of on December 21, 2019.

During the hearing the landlord confirmed that an application to dispute returning the security deposit for a claim in damages was not made; and the tenants did not give consent to the landlord to retain the security deposit.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

I accept the affirmed testimony of both parties and find on a balance of probabilities that the landlord withheld the \$600.00 security deposit and did not return it within the allowed 15 day time period. On the landlord's argument that the tenants' forwarding address in writing was provided to the landlord, I find based upon the tenants' documentary evidence that on a balance of probabilities that the landlord was served with the tenants forwarding address in writing via Canada Post Registered Mail on December 21, 2019. The tenants provided a copy of the handwritten letter, a photograph of the Canada Post envelope with the Canada Post Customer Receipt Tracking label in conjunction with the tenants' undisputed testimony that the package was signed and received on December 21, 2019. I find that the landlord did not file an application for dispute of its return nor was the landlord in possession of the tenants' consent to retain the security deposit. On this basis, the tenants have established a claim for return of the original \$600.00 security deposit.

I also find that the landlord failed to comply with section 38(1) and is subject to 38(6), the landlord is required to pay a monetary award which is equal to the \$600.00 security deposit.

The tenants having been successful are entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenants are granted a monetary order for \$1,300.00.

This order must be served upon the landlord. Should the landlord 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.

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 29, 2020

Residential Tenancy Branch