



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FFT

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act). The tenants applied for the return of double their security deposit and pet damage deposit, plus the recovery of the cost of the filing fee.

The tenants attended the teleconference hearing and were affirmed. The hearing process was explained to the tenants and an opportunity to ask questions was provided. During the hearing the tenants provided affirmed testimony and their documentary evidence. A summary of the evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated January 14, 2020 (Notice of Hearing), application and documentary evidence were considered. The tenants testified that the Notice of Hearing, application and documentary evidence were served on the landlord by registered mail on January 16, 2020. The tenants provided a registered mail tracking number in evidence and confirmed that the name and address on the registered mail package matched the name of the landlord and the address for the landlord, which was the rental unit address as the landlord moved back into the rental unit house after the tenants vacated. In addition, the registered mail tracking number has been included on the style of cause for ease of reference and has been identified as 1.

According to the Canada Post online registered mail tracking website, the registered mail package was mailed on January 16, 2020 as stated by the tenants and was delivered to the landlord on January 19, 2020. Therefore, I find the landlord was served with the Notice of Hearing, application and documentary evidence on January 19, 2020,

which was confirmed by the Canada Post online registered mail tracking website. Given the above, the hearing continued without the landlord present as I am satisfied that the landlord was served in accordance with the Act.

Preliminary and Procedural Matter

The tenants confirmed the email addresses for both parties at the outset of the hearing and stated that they understood that the decision would be emailed to both parties. In addition, the tenants confirmed that they understood that a monetary order would be served by email to the tenants only for service on the landlord.

Issues to be Decided

- Are the tenants entitled to the return of double their security deposit and pet damage deposit under the Act?
- Are the tenants entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

The tenants stated that the landlord did not completed a written tenancy agreement. The tenants stated that a verbal agreement began on May 1, 2017 and that monthly rent was \$1,150.00 per month plus \$150.00 for utilities. The tenants confirmed that they paid a security deposit of \$575.00 and a pet damage deposit of \$575 for a total of \$1,150.00 in combined deposits (combined deposits) at the start of the tenancy. The tenants testified that the landlord has failed to return any portion of their combined deposits.

The tenants submitted a copy of their written forwarding address dated December 18, 2019. The tenants stated that they vacated the rental unit on November 30, 2019 and that they served their written forwarding address by registered mail on December 18, 2019 and provided a second registered mail tracking number, which has been included on the style of cause and identified as 2 for ease of reference. According to the online Canada Post registered mail tracking website, the written forwarding address was delivered on December 19, 2019. The tenants testified that the landlord continues to hold the tenant's full combined deposits of \$1,150.00. The tenants also stated that they did not provide permission or written authorization for the landlord to retain any portion of their combined deposits. The tenants also testified that the landlord has not filed a claim against the tenant's deposits.

The tenants are seeking double their combined deposits plus the filing fee.

Analysis

Based on the undisputed documentary evidence presented and the undisputed testimony of the tenants, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenants must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the tenants did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Having considered the undisputed documentary evidence and undisputed testimony and given that the online registered mail website confirmed the testimony of the tenants, I find that the landlord was served as of December 19, 2019, which is the date the Canada Post registered mail website confirms the written forwarding address was served on the landlord. Further, I accept the tenants' testimony that the landlord has failed to return any portion of the tenant's \$1,150.00 in combined deposits.

Sections 38(1) and 38(6) of the Act apply and state:

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.

[Emphasis added]

Given the above, I find the landlord failed to either claim against the tenants' combined deposits of \$1,150.00 within 15 days of December 19, 2019. Therefore, I find the landlord breached section 38(1) of the Act and I find the tenants are entitled to the return of double the combined deposits of \$1,150.00 for a total of **\$2,300.00**. I note that the tenants' combined deposits have accrued \$0.00 in interest since the start of the tenancy. The tenants have met the burden of proof.

As the tenants paid a filing fee of \$100.00 and their application was successful, I grant the tenants **\$100.00** pursuant to section 72 of the Act for the full recovery of the filing fee.

Monetary Order – I find that the tenants have established a total monetary claim in the amount of **\$2,400.00**, comprised of \$2,300.00 for double the combined deposits, plus the \$100.00 filing fee. I grant the tenants a monetary order pursuant to section 67 of the Act in the amount of \$2,400.00.

I caution the landlord not to breach section 38(1) of Act in the future.

Conclusion

The tenant's application is fully successful.

The tenant has established a total monetary claim of \$2,400.00 as indicated above. I caution the landlord to comply with section 38(1) of the Act in the future.

This decision will be emailed to both parties. The monetary order will be emailed to the tenants only for service on the landlord. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: June 4, 2020

Residential Tenancy Branch