



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 38.1 of the *Residential Tenancy Act* (the *Act*), and dealt with an Application for Dispute Resolution by the tenants for a Monetary Order seeking the return of their security deposit.

The tenants submitted a signed “Proof of Service of the Tenant’s Notice of Direct Request Proceeding” form which declares that on June 14, 2020, the tenants served the landlord with the Notice of Direct Request Proceeding, along with copies of supporting documents, via email. The tenants provided a copy of the June 14, 2020 email message addressed the landlord. The email message included five file attachments which the tenants assert contained the Direct Request Proceeding documents.

On March 30, 2020, the Executive Director of the Residential Tenancy Branch (“RTB”) authorized a *Director’s Order* which, pursuant to sections 71(2)(b) and (c) of the *Residential Tenancy Act*, orders that until the declaration of the state of emergency made under the *Emergency Program Act* on March 18, 2020 is cancelled or expires without being extended:

a document of the type described in section 88 or 89 of the Residential Tenancy Act has been sufficiently given or served for the purposes of the Act if the document is given or served on the person in one of the following ways:

- *the document is emailed to the email address of the person to whom the document is to be given or served, and that person confirms receipt of the document by way of return email in which case the document is deemed to have been received on the date the person confirms receipt;*

- *the document is emailed to the email address of the person to whom the document is to be given or served, and that person responds to the email without identifying an issue with the transmission or viewing of the document, or with their understanding of the document, in which case the document is deemed to have been received on the date the person responds; or*
- *the document is emailed to the email address that the person to whom the document is to be given or served has routinely used to correspond about tenancy matters from an email address that the person giving or serving the document has routinely used for such correspondence, in which case the document is deemed to have been received three days after it was emailed*

Based on the written submissions of the tenants, and pursuant to the above-noted *Director's Order*, and pursuant to sections 71(2)(b) and (c) of the Act, I find that the landlord is deemed to have received the the Direct Request Proceeding documents on June 17, 2020, three days after they were sent to the landlord by the tenants by way of email.

Although a third individual, identified as "SK", is listed as an applicant tenant on the application for dispute resolution, neither the name nor signature for "SK" appears on the tenancy agreement to demonstrate that "SK" entered into a tenancy with the respondent landlord and endorsed the terms of the tenancy agreement as a tenant. Therefore, I will consider the application with the male tenant "CK" and the female tenant "CK" being the sole applicants and amend the application, in accordance with section 64(3)(c), to exclude "SK" as a party to this dispute.

Issue(s) to be Decided

Are the tenants entitled to a monetary award for the return of all or a portion of their security deposit pursuant to section 38 of the Act? If so, should it be doubled?

Are the tenants entitled to recover the filing fee for this application from the landlord pursuant to section 72 of the Act?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

On the tenant's Application for Dispute Resolution by Direct Request (the "application"), the tenants have requested a Monetary Order seeking the return of their security deposit in the amount of \$1,137.50.

On the application, the tenants attested that the tenancy ended on April 29, 2020, the date on which the tenants vacated the rental unit subsequent to the end of the fixed-term tenancy.

The tenants submitted, in part, the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants, indicating a monthly rent of \$2,275.00, due on the first day of each month for a tenancy commencing on May 20, 2019. The tenancy agreement depicts that the tenants were required to pay a security deposit in the amount of \$1,137.50;
- A copy of a Tenant's Monetary Order Worksheet for an Expedited Return of Security Deposit and/or Pet Damage Deposit (the Monetary Order Worksheet) showing the amount of the security deposit paid by the tenants and the amount sought in return by the tenants. The tenants asserted that they did not agree to any authorized deduction from the security deposit, and also stated that there is no authorized deduction previously granted by an arbitrator permitting the landlord to retain any amount of the security deposit. The tenants attested that they are not aware of any monetary order made against the security deposit or any monetary order for the tenants to pay an amount to the landlord that remains unpaid. The tenants stated that the landlord returned a partial amount of the security deposit, in the amount \$20.62; the tenants seek the return of the balance of the security deposit in the amount of \$1,116.88, which the tenants state is being held by the landlord with their consent. The tenants asserted that on April 29, 2019, they provided to the landlord a security deposit in the amount of \$1,137.50.

The tenants provided a copy of a receipt from the landlord, dated April 29, 2019, which depicts that the tenants provided \$1,137.50 for a security deposit.

On the Monetary Order Worksheet, the tenants stated that they and the landlord participated in both a move-in condition inspection and a move-out condition inspection. The tenants asserted that they were provided a copy of the condition inspection report subsequent to both the move-in condition inspection and the move-out condition

inspection. The tenants submitted copies of both the move-in condition inspection report and move-out condition inspection report as evidence.

The tenants stated that on April 29, 2020, their forwarding address was provided to the landlord by having it written on the condition inspection report during the move-out condition inspection conducted on April 29, 2020.

The tenants also provided a copy of a "Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit form" (Proof of Service of the Forwarding Address) which depicts that the tenant's agent "JK" provided the forwarding address to the landlord which was written on the condition inspection report during the move-out condition inspection conducted on April 29, 2020. The Proof of Service form includes a name and signature for the tenant's agent JK to attest that JK provided the forwarding address on the move-out condition inspection report. The Proof of Service form also depicts that an individual bearing the initials "CK" attests to having witnessed JK provide the forwarding address and a signature for "CK" is included on the form.

Analysis

I have reviewed all documentary evidence provided by the tenants. I find that in accordance with section 88 of the Act the landlord was duly served with the tenants' forwarding address on April 29, 2020, the date on which the tenants' agent provided the tenants' forwarding address to the landlord by having it written on the condition inspection report during the move-out condition inspection conducted on April 29, 2020.

I accept the following declarations made by the tenants on the Monetary Order Worksheet:

- The tenants have not provided consent for the landlord to keep all or part of the deposit;
- There are no outstanding Monetary Orders against the tenants for this tenancy; and
- The tenants have not extinguished their right to the security deposit in accordance with sections 24(1) and 36(1) of the *Act*.

Based on the declarations provided by the tenants, I find that the landlord did not have the tenants' written consent to retain any portion of the security deposit.

I have reviewed all documentary evidence and I find that the tenants paid a security deposit in the amount of \$1,137.50, as indicated in the tenancy agreement.

I accept the tenants' statement on the Monetary Order Worksheet that the tenancy ended on April 29, 2020, the date on which the tenants vacated the rental unit.

The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. The landlord may only keep all or a portion of the security deposit or pet damage deposit through the authority of the Act, such as an order from an arbitrator, or the written agreement of the tenant.

Section 38(1) of the Act requires the landlord to either return a tenant's security deposit and/or pet damage deposit in full or file for dispute resolution for authorization to retain the deposit(s) 15 days after the *later* of the end of a tenancy, or upon receipt of the tenant's 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 security deposit and/or the pet damage deposit. There are exceptions to this outlined in sections 38(2) to 38(4) of the Act. A landlord may also under sections 38(3) and 38(4) retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator or if the tenant agrees in writing that the landlord may retain the amount to pay a liability or obligation of the tenant.

Based on the declarations provided by the tenants, I find that the rights of the tenants to seek the return of their security deposit have not been extinguished.

I find that the landlord did not adhere to the requirements of section 38(1) of the Act, as the landlord did not return the security deposit in full, as requested by the tenants, within 15 days of April 29, 2020 (the date on which the landlord received the tenant's forwarding address and the date on which the tenancy ended). I find that the landlord retained \$1,116.88 from the security deposit without the tenants' authorization.

There is no evidence before me to show that the landlord applied for dispute resolution claiming against the security deposit within 15 days following the conclusion of the tenancy or after receiving the tenant's forwarding address.

I find that there is no evidence before me to demonstrate that the landlord received the tenants' written authorization to retain all, or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a) of the Act, nor did the landlord receive an order from an Arbitrator enabling it to do so.

Section 38(6) of the Act sets out what is to occur in the event that a landlord fails to return or claim the security deposit within the specified timeframe:

- (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.

Pursuant to section 38(6)(b) of the Act, a landlord is required to pay a monetary award equivalent to double the value of the security deposit if a landlord does not comply with the provisions of section 38 of the Act. I find that the landlord failed to adhere to section 38(1) of the Act.

The language of section 38(6)(b) is mandatory. As the landlord has failed to comply with section 38(1), I must order that the landlord pay the tenants double the amount of the unreturned portion of the security deposit.

Residential Tenancy Policy Guideline 17 states that "unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit." However, the tenants have not provided any such waiver; therefore the provisions of section 38(6)(b) must be applied.

The tenants are therefore entitled to a monetary award in the amount of \$2,233.76, representing a doubling of the tenants' unreturned security deposit (\$1,116.88 x 2).

As the tenants were successful in this application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

Pursuant to sections 38 and 72 of the Act, I issue a Monetary Order in the tenants' favour in the amount of \$2,333.76 against the landlord, calculated as follows:

Item	Amount
Doubling of unreturned Security Deposit (\$1,116.88 x 2)	\$2,233.76
Recovery of Filing Fee	\$100.00
Total Monetary Award to Tenants	\$2,333.76

The tenants are provided with a Monetary Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord(s) 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: June 23, 2020

Residential Tenancy Branch