



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- an order for the landlord to return the security deposit, pursuant to sections 38 and 38(1) of the Act;
- an authorization to recover the filing fee for this application, pursuant to section 72 of the Act.

Both parties attended both the first and the reconvened hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Preliminary Issue – Service of Documents

The tenant affirmed she served the application and the evidence by email on June 18, 2020. The landlord confirmed receipt of the email with the application and the evidence within a week from the day the email was sent.

The Residential Tenancy Branch Director's order dated March 30, 2020 provides that:

Pursuant to sections 71(2)(b) and (c) of the Residential Tenancy Act and sections 64(2)(b) and (c) of the Manufactured Home Park Tenancy Act, I order 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 or section 81 or 82 of the Manufactured Home Park Tenancy Act has been sufficiently given or served for the purposes of the applicable 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 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

As the email is dated June 18, 2020, the landlord is deemed to have received the materials on June 21, 2020, in accordance with section 71(2)(b) and (c) of the Act and the Director's order dated March 30, 2020.

The landlord affirmed she could not serve her evidence on the tenants because service by email was not accepted when she read the email and she did not have an address for service.

The notice of hearing contains the tenants' address for service.

As the landlord did not serve her evidence, the landlord's evidence is not accepted.

Issues to be Decided

Are the tenants entitled to:

1. an order for the landlord to return double the security deposit?
2. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below. I explained to the attending parties it is their obligation to present the evidence, pursuant to Rule of Procedure 7.4.

Both parties agreed the fixed-term tenancy started on October 01, 2019, ended on February 28, 2020 and was supposed to end on May 31, 2020. Monthly rent was \$2,550.00 due on the first day of the month. At the outset of the tenancy a security deposit of \$1,275.00 was collected.

The tenant explained she sent a hand-written letter by registered mail in the end of March or beginning of April 2020 with her forwarding address and instructions for electronic payment for the return of the security deposit. A copy of the letter was submitted into evidence.

The landlord said she received the hand-written letter sometime in April or May.

Both parties agreed the amount of \$650.00 was returned on April 24, 2020.

The tenants confirmed they did not authorize the landlord to retain the security deposit.

The landlord stated the tenants authorized her to retain the balance of the security deposit. The landlord also testified the tenants did not return the condition inspection report form.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

I find the landlord has not brought an application for dispute resolution claiming against the security deposit pursuant to section 38(1)(d) of the *Act*.

I accept the undisputed testimony and documentary evidence that the tenancy ended on February 28, 2020, the tenants gave the landlord written notice of their forwarding address by May 31, 2020 and that the landlord only returned \$650.00 of the \$1,275.00 security deposit.

The parties offered conflicting verbal testimony regarding whether there was an authorization for the landlord to retain the balance of the security deposit. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide evidence over and above their testimony to establish their claim.

The landlord did not provide any documentary evidence to support her claim. The landlord did not call any witnesses. Thus, I find the landlord did not prove, on a balance of probabilities, the tenants authorized her to retain the balance of the security deposit.

As the landlord did not receive an authorization from the tenants or the director of the Residential Tenancy Branch to retain the balance of the security deposit, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit.

Residential Tenancy Branch Policy Guideline 17 states:

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:

- if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;

The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:

- Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit ($\$400 \times 2 = \800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is \$525.00 ($\$800 - \$275 = \525).

Under these circumstances and in accordance with sections 38(6)(b) and 72 of the Act and Policy Guideline 17, I find that the tenants are entitled to a monetary award of \$1,900.00 ($1,275.00 \times 2 - 650.00$). Over the period of this tenancy, no interest is payable on the landlord's retention of the security deposit.

As the tenants' application is successful, I award the tenants the return of the filing fee.

In summary:

ITEM	AMOUNT \$
Section 38(6) - doubling of \$1,275.00 security deposit	2,550.00
Minus amount returned	-650.00
Section 72 - reimbursement of filing fee	100.00
TOTAL	2,000.00

Conclusion

Pursuant to sections 38(6)(b) and 72 of the Act, I grant the tenants a monetary order in the amount of \$2,000.00.

This order must be served on the landlord by the tenants. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) to be 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: August 04, 2020

Residential Tenancy Branch