



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LIONS COURT HOLDINGS and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

On June 24, 2020, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for a return of double the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

Tenant B.G. attended the hearing; however, the Landlord did not attend at any point during the 47-minute hearing. All parties in attendance provided a solemn affirmation.

The Tenant advised that due to the COVID pandemic, they left the country. However, they had a friend of theirs serve the Notice of Hearing and evidence package to the Landlord by registered mail on July 4, 2020 (the registered mail tracking number is on the first page of this Decision). She stated that this was mailed to the Landlord’s address noted on the signature block of the Landlord’s emails. The registered mail tracking history indicated that a notice card was left to pickup this package on July 7, 2020 and the package was returned to sender on July 31, 2020 as it went unclaimed.

This Notice of Hearing package was provided to the Tenants on June 25, 2020 and was required to be served to the other party within three days pursuant to Rule 3.1. of the Rules of Procedure. While this package was served late, as the Landlord did not accept the package, I find that the lateness is of no consequence as the Landlord did not even bother to pick up the package. Had the Landlord accepted the package in July 2020, there still would have been ample opportunity to respond to the Tenants’ claims and bring up any concerns with the lateness of this service at the scheduled hearing. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing package and evidence.

As such, I have accepted this evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a return of double the security deposit?
- Are the Tenants entitled to monetary compensation?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenant advised that the tenancy started on September 15, 2017 and that the tenancy ended when they gave up vacant possession of the rental unit on March 21, 2020 and left the keys behind. Rent was established at \$2,878.20 per month and was due on the first day of each month. A security deposit of \$1,350.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

She stated that due to the pandemic, they had to leave to return to their home country. They initially emailed the Landlord on March 1, 2020 asking to end the tenancy by April 15, 2020; however, due to the circumstances surrounding the pandemic, they emailed the Landlord again asking to end the tenancy for March 31, 2020. She stated that the Landlord approved that the tenancy could end by April 15, 2020, but the Landlord did not cancel the automatic withdrawal of April 2020 rent. She advised that the Landlord returned half a month's rent back to them on April 10, 2020 for April 16 to April 30, 2020 rent.

However, she stated that they are seeking compensation in the amount of **\$1,439.10** because the Landlord had vacant possession of the rental unit before April 1, 2020 and had entered the rental unit to conduct maintenance. She referenced a picture submitted as documentary evidence to support her position that the Landlord conducted

maintenance to the rental unit from before April 1 to April 14, 2020. She stated that the Landlord re-rented the unit on April 15, 2020.

She advised that they provided the Landlord with their email address as their forwarding address in writing on April 20, 2020. She stated that the Landlord replied to this email on April 22, 2020. While the Landlord did return \$600.68 of the security deposit to the Tenants on April 10, 2020, they did not give the Landlord any written consent to keep any of their deposit. Therefore, they are seeking compensation in the amount of double the deposit because the Landlord did not comply with Section 38 of the *Act*.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the undisputed evidence before me, the Tenants provided a forwarding email address to the Landlord on April 20, 2020. Due to the pandemic and the resultant State of Emergency, email for service of documents was permitted at this time. Moreover, the undisputed evidence is that the Landlord replied to this email two days later. As such, I am satisfied that the Landlord was in possession of a manner with which they could have dealt with the deposit in accordance with the *Act*.

I find it important to note that Section 38 of the *Act* clearly outlines that from the later point of a forwarding address in writing being provided or from when the tenancy ends, the Landlord must either return the deposit in full **or** make an application to claim against the deposit. There is no provision in the *Act* which allows the Landlord to retain a portion of the deposit without the Tenants' written consent.

The undisputed evidence before me is that the Landlord did not return the security deposit in full or make an Application to keep a portion of the deposit within 15 days of

April 20, 2020. As the consistent evidence is that the Landlord illegally withheld a portion of the deposit contrary to the *Act*, and did not comply with the requirements of Section 38, I find that the doubling provisions of this Section apply in this instance.

As per Policy Guideline # 17, as the Tenants paid a security deposit of \$1,350.00, and as the Landlord held back \$749.32 without the Tenants' written authorization, the monetary award granted shall be calculated as follows: $\$1,350.00 \times 2 = \$2,700.00 - \$600.68 = \$2,099.32$. Under these provisions, I grant the Tenants a monetary award in the amount of **\$2,099.32**.

With respect to the Tenants' claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided." The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred, and that it is up to the party claiming compensation to provide evidence to establish that compensation is warranted. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenants prove the amount of or value of the damage or loss?
- Did the Tenants act reasonably to minimize that damage or loss?

Regarding the Tenants' claim for compensation in the amount of \$1,439.10 for April 1 to April 15, 2020 rent, as explained to the Tenant during the hearing, they were required under Section 45 of the *Act* to give one full month's written notice to end their tenancy. As they provided written notice in March 2020, their tenancy would have effectively ended by April 30, 2020 and they were responsible for all of April 2020 rent. As such, the Landlord did not need to take any steps to re-rent the unit and could expect the full rent to be paid for April 2020 by the Tenants.

However, the Landlord did re-rent the unit on April 15, 2020 and then credited the Tenants back half a month of rent. Given that the Tenants willingly gave up vacant possession of the rental unit on March 21, 2020 and breached the *Act* by giving insufficient notice to end their tenancy, I do not find that they should receive

compensation back for the first half of April 2020 rent as the Tenant acknowledged that they did not leave the rental unit in a entirely re-rentable condition. As such, I am satisfied that the Landlord was required to use this time to ready the rental unit to be re-rented. Consequently, I dismiss this claim in its entirety.

As the Tenants were partially successful in this Application, I find that they are entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenants

Doubling of security deposit	\$2,099.32
Filing fee	\$100.00
TOTAL MONETARY AWARD	\$2,199.32

Conclusion

The Tenants are provided with a Monetary Order in the amount of **\$2,199.32** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord 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: October 15, 2020

Residential Tenancy Branch