



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR 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 monetary order for the return of double their security deposit plus the recovery of the cost of the filing fee.

The tenants originally applied through the Direct Request process, which is an ex-parte process, however, based on the August 12, 2020 Interim Decision, this matter was adjourned to a participatory hearing scheduled for September 14, 2020. All parties attended on September 14, 2020, and the matter was adjourned again, for the reasons stated in my Interim Decision dated September 14, 2020, which should be read in conjunction with this decision. I confirmed that the Interim Decision dated September 14, 2020, was emailed to all parties on September 15, 2020.

On this date, October 30, 2020, the hearing reconvened, and only the tenants attended. In addition, the landlord did not submit any documentary evidence, although they were given the opportunity to do so as indicated in my Interim Decision dated September 14, 2020. As a result of the above, I consider this matter to be unopposed by the landlord as the landlord failed to attend on October 30, 2020 and after 13 minutes, the hearing was concluded.

I have considered all documentary evidence submitted by the tenants, which was served in accordance with the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matter

On September 14, 2020, the parties confirmed their email address at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Issues to be Decided

- Are the tenants entitled to the return of double their security deposit under the Act?
- If yes, are the tenants entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on August 1, 2019 and was scheduled to revert to a month to month tenancy after August 1, 2020. The tenants paid an \$800.00 security deposit, that the landlord continues to hold. The monthly rent was \$1,600.00 per month and was due on the first day of each month.

The tenants testified that they vacated the rental unit on June 20, 2020 and that they were permitted to vacated based on a mutual agreement with the landlord. The tenants testified that on July 13, 2020, the tenants provided their written forwarding address by registered mail. The registered mail tracking number was provided during the hearing and has been included on the Style of Cause for ease of reference. According to the online Canada Post registered mail tracking website, the registered mail package was mailed on July 13, 2020 and was delivered on July 21, 2020. Based on the evidence before me, I find the landlord was duly served on July 21, 2020 with the tenants' written forwarding address. The tenants confirmed that the landlord was able to secure new tenants for July 1, 2020.

The tenants testified that the landlord has not returned any portion of their \$800.00 security deposit. The tenant also confirmed that they did not give any permission for the landlord to retain any portion of their security deposit. There was no evidence before me that the landlord has made an application to claim against the tenants' security deposit.

Analysis

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

I accept that the tenants did not provide permission for the landlord to retain any portion of their \$800.00 security deposit. I am also satisfied that the tenant provided their written forwarding address by registered mail, a copy of which was submitted for my consideration. I find the landlord had that written forwarding address by July 21, 2020. I accept the tenants' undisputed testimony that the landlord has not returned any amount of their security deposit. As a result, section 38 of the Act applies and states in part:

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]

Based on the above, I find the landlord has breached section 38 of the Act by failing to return or claim against the tenants' security deposit. In reaching this finding I have considered that there is no evidence before me that the landlord applied to retain any portion of the tenants' security deposit or had written permission to retain any amount of the security deposit.

The security deposit is held in trust for the tenants 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 through the authority of the Act, such as an order from an arbitrator, or the written agreement of the tenant. In the matter before me, I find the landlord did not have any authority under the Act to keep any portion of the security deposit and did not return the security deposit to the tenants within 15 days of July 21, 2020 as required by the Act.

Section 38(6) of the Act provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant **double** the amount of the security deposit. The legislation does not provide any flexibility on this issue.

As a result, I find the tenants have met the burden of proof and I grant the tenants **\$1,600.00**, which is double their original \$800.00 security deposit, pursuant to section 67 of the Act. In addition, I grant the tenants **\$100.00** pursuant to section 72 of the Act, for the recovery of the cost of the filing fee. Given the above, I find the tenant has established a total monetary claim of **\$1,700.00**.

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

Conclusion

The tenants' application is fully successful.

The tenants are granted a monetary order in the amount of \$1,700.00 as described above. The monetary 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.

The landlord may be held liable for the costs associated with enforcing the monetary order.

The decision will be emailed to the parties.

The monetary order will be emailed to the tenants only for service on the landlord.

The landlord has been cautioned not to breach section 38 of the Act in the future.

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: November 2, 2020

Residential Tenancy Branch