



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, FFT

Introduction

The tenants seek the return, and doubling, of their security deposit pursuant to sections 38(1) and 38(6) of the *Residential Tenancy Act* ("Act"). In addition, they seek recovery of the application filing fee under section 72 of the Act.

The tenants filed an application for dispute resolution on August 10, 2020 and a hearing was held on November 27, 2020. The tenants, their advocate, one of the landlords, and the landlords' advocate attended the hearing and were given an opportunity to be heard, present testimony, make submissions, and call witnesses.

Preliminary Issue: Forwarding Address

Briefly by way of background, the tenancy in this dispute began on January 1, 2020 and ended on June 24, 2020. The tenants paid a security deposit of \$450.00.

The tenants' advocate made submissions regarding the tenants sending the landlords the tenants' forwarding address in writing on or about July 2, 2020. They sent this by way of Canada Post Registered Mail. Tracking information indicated that the mail had been delivered to the community mailbox. However, as is currently the case, Canada Post does not obtain signatures (as they were before the pandemic).

The landlords' advocate made submissions in which the landlords deny having ever received the tenants' forwarding address. She made the argument, by which I am persuaded, that due to the nature of a community mailbox, it is not guaranteed that mail was received by the landlords despite Canada Post indicating that it was "delivered." Canada Post may have (and likely did) deliver the mail to the community mailbox, but there is insufficient evidence (which would rebut any claim made by a party that they did not receive mail) that the mail was put in the landlords' mailbox. This is, as explained to the parties, a difficulty that has arisen since Canada Post stopped collecting signatures.

Section 38(1) of the Act states the following regarding what a landlord's obligations are at the end of the tenancy with respect to security and pet damage deposits:

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.

Based on the evidence and a careful consideration of each parties' advocates' submissions, I find that the landlords did not receive the tenants' forwarding address in writing pursuant to section 38(1)(b) of the Act. As such, the tenants' claim for the return of their security deposit (and for a doubling of that amount) is premature.

At this point, I will apply *Residential Tenancy Branch Practice Directive 2015-01* ("Forwarding Address for the Return of a Tenant's Security Deposit"). This directive essentially states that where a landlord has not received a tenant's forwarding address, and in many cases the first time they receive that address is in a Notice of Dispute Resolution Proceeding package, that the arbitrator may confirm the tenant's forwarding during the hearing. And, that the date on which the hearing occurs shall be considered the date by which the landlord has received the tenant's forwarding address.

During the hearing I read aloud the tenants' forwarding address. The tenants and their advocate confirmed that the address was correct. I confirmed with the landlord's advocate that she had recorded the tenants' forwarding address.

As such, the landlords have 15 days from today's date of November 27, 2020 to either (1) repay the security deposit of \$450.00 to the tenants, or (2) make an application for dispute resolution claiming against the security deposit.

Finally, as the tenants' application for the return of the security deposit was, as I have concluded, made prematurely, I decline to award \$100.00 for recovery of the filing fee.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: November 27, 2020

Residential Tenancy Branch