



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 two signed “Proof of Service of the Tenant’s Notice of Direct Request Proceeding” forms which declare that on October 14, 2020 the tenants served each of the above-named landlords with the Notice of Direct Request Proceeding, along with copies of supporting documents, via registered mail. The tenants provided two copies of the Canada Post mail tickets and receipts containing the tracking numbers to confirm these mailings. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days after service.

Based on the written submissions of the tenants, and in accordance with sections 89 and 90 of the *Act*, I find that the landlords are deemed to have received the Direct Request Proceeding documents on October 19, 2020, the fifth day after their registered mailing.

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 tenants' 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 \$1,360.00.

On the application, the tenants attested that the tenancy ended on August 31, 2020, the date on which the tenants vacated the rental unit subsequent to a tenants' notice to end the 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 \$1,359.00, due on the first day of each month for a tenancy commencing on March 01, 2019. The tenancy agreement depicts that the tenants were required to pay a security deposit in the amount of \$680.00 on March 01, 2019;
- 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 seek the full return of the security deposit of \$680.00, and with applicable doubling provisions permitted under the Act, seek the return of the security deposit in the sum of \$1,360.00. The tenants asserted that they paid the security deposit in the amount of \$680.00 to the landlord on March 01, 2019.

On the Monetary Order Worksheet, the tenants attested that they were not given at least one opportunity to participate in a move-in condition inspection by the landlord. The tenants additionally attested that neither they nor an authorized representative participated in a move-in condition inspection as the landlord did not conduct a move-in condition inspection.

On the Monetary Order Worksheet, the tenants provide that they and the landlord participated in a move-out condition inspection. The tenants asserted that a move-out condition inspection report was drafted and signed by the parties subsequent to the move-out condition inspection. The tenants submitted a copy of the move-out condition inspection report as evidence.

The tenants attested that they provided their forwarding address in writing to the landlord during the move-out condition inspection held on August 31, 2020. The tenants stated that on August 31, 2020, their forwarding address was provided to the landlord by having it written on the move-out condition inspection report, dated August 31, 2020, during the move-out condition inspection.

The tenants asserted, and the form shows, that the move-out condition inspection report was signed by the tenant and the landlord and includes the tenants' forwarding address. The tenants assert that a copy of the move-out condition inspection report containing the tenants' written forwarding address was provided to the landlord on August 31, 2020.

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 tenant's forwarding address on August 31, 2020, the date on which the tenants provided their forwarding address to the landlord by having it written on the condition inspection report during the move-out condition inspection conducted on August 31, 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 security 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 \$680.00 as indicated in the tenancy agreement.

I accept the tenants' statement on the Monetary Order Worksheet that the tenancy ended on August 31, 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, in the amount of \$680.00, as requested by the tenants, within 15 days of August 31, 2020 (the date on which the landlord duly received the tenants' forwarding address and the date on which the tenancy ended).

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 tenants' 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 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 \$1,360.00, representing a doubling of the tenants' unreturned security deposit (\$680.00 x 2).

As the tenant 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, 67, and 72 of the Act, I issue a Monetary Order in the tenants' favour in the amount of \$1,460.00 against the landlord, calculated as follows:

Item	Amount
Doubling of unreturned Security Deposit (\$680.00 x 2)	\$1,360.00
Recovery of Filing Fee	\$100.00
Total Monetary Award to Tenants	\$1,460.00

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: November 04, 2020

Residential Tenancy Branch