



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT, MNDCT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for the landlord to return the security deposit pursuant to section 38;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The tenant attended and was given a full opportunity to be heard, to present affirmed testimony, make submissions, and call witnesses. I explained the hearing process and provided the tenant with an opportunity to ask questions.

The tenant provided affirmed testimony that they served each of the landlords with the Notice of Hearing and Application for Dispute Resolution by separate registered mail sent on December 31, 2020 and deemed received by the landlords under section 90 of the Act 5 days later, that is, on January 5, 2021.

The tenant provided the Canada Post Tracking Numbers in support of service by registered mail. Considering the tenant's testimony and supporting evidence, I find the tenant served the landlords as required by the Act with the Notice of Hearing and Application for Dispute Resolution on January 5, 2021.

The landlords did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional twenty minutes to allow the landlords the opportunity to call. The teleconference system indicated only the tenant and I had called into the hearing. I confirmed the correct call-in number and participant code for

the landlords was provided.

Preliminary Issue – Previous Decision and Provision of Forwarding Address

This hearing followed a previous Decision of an Arbitrator made on November 20, 2020 under the file number referenced on the first page. The tenant provided a copy of the Decision.

The previous hearing was the first application by the tenant for the return of the security deposit. The landlord JP attended the previous hearing and testified that the other landlord, TP was his spouse. The landlord JP testified during the hearing that the landlord TP had received the security deposit.

However, the Arbitrator found that the tenant had not previously provided her forwarding address to the landlords.

The Decision stated that the tenant provided the forwarding address during the hearing and the landlord JP acknowledged receipt. The address was also referenced on the first page of the Decision and a copy of the Decision sent to the landlords. The Arbitrator stated in the Decision that the landlord JP was warned about the 15-day period after receiving the forwarding address to refund the security deposit to the tenant or to make a claim.

Pursuant to the previous Decision, I find the tenant provided her forwarding address during the hearing on November 20, 2020 to the landlord JP who received the information on behalf of both landlords. I also find the landlord JP acknowledged receipt of the security deposit claimed on behalf of both landlords.

Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit, a doubling of the security deposit, and reimbursement of the filing fee?

Background and Evidence

The tenant provided substantial testimony and supporting documentation including written submissions, copies of texts, correspondence, and banking information. Not all the evidence is referenced in my Decision. Only key relevant facts are mentioned.

The tenant provided uncontradicted evidence as the landlord did not attend the hearing.

The tenant testified as follows. The parties entered into a verbal tenancy agreement on July 3, 2020 for a lease to start August 1, 2020. The rent was \$4, 200.00 monthly payable on the first of the month. On July 3, 2020, the tenant e-transferred \$2,100.00 to the landlord TP and provided documentary evidence of the transfer.

As referenced earlier, the landlords acknowledged receipt of the security deposit as stated in the previous Decision.

However, the landlord refused to provide the keys to the unit to the tenant. As a result, the tenant never moved in or paid rent. The tenant submitted substantial documentary evidence of her texts and correspondence with the landlords in which she tried in vain to get the key; when this proved fruitless, she tried to get the security deposit back. In her written submissions, the tenant stated in part:

Between July 3 and July 7, [2020], I made attempts to obtain keys to the property in order to allow me to show the property to potential co-tenants. Each time, [the male landlord] refused my requests, which are documented in text messages and electronic mail. Instead, [the male landlord] averred that he was “busy” and “working” until 14 July and, in any case, he would not provide me with a key until the lease was to be signed and commenced on August 1.

The tenant testified that the landlord continued to advertise the property after she paid the security deposit. From the landlords’ refusal to provide the key and by the continuation of advertising, the tenant came to believe that she had been “scammed”; that is, the landlords took her security deposit without ever intending to rent the unit to her.

As a result, on July 7, 2020, the tenant requested the return of her security deposit; she submitted copies of the texts between the parties. The tenant provided documentary evidence of repeated requests to get the security deposit back. The landlords have failed to return the security deposit. The tenant testified that she has not provided consent to the landlords to retain the security deposit.

The tenant testified that the landlords have not filed an Application for Dispute Resolution claiming against the security deposit.

The tenant claims reimbursement of double the security deposit as the landlord did not

return the security deposit within 15 days of the later of the end of the tenancy or the provision of the forwarding address in writing. The tenant claimed as follows:

ITEM	AMOUNT
Security deposit	\$2,100.00
Double the Security Deposit	\$2,100.00
Reimbursement of the Filing Fee	\$100.00
TOTAL CLAIM	\$4,300.00

Analysis

I have reviewed all evidence and testimony before me and will refer only to the relevant facts and issues meeting the admissibility requirements of the rules of procedure.

The Act contains comprehensive provisions regarding security and pet damage deposits.

As stated in section 38 of the Act, the landlord is required to either return the tenants' 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 and receipt of the tenant's forwarding address in writing.

Section 38 states as follows:

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.

If that does not occur, the landlord must pay a monetary award equivalent to double the value of the security deposit.

Section 38(6) states as follows:

*(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*

However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit pursuant to section 38(4)(a).

I find the landlord has not brought proceedings for compensation or an application for dispute resolution claiming against the security deposit for any outstanding rent or damage to the rental unit pursuant to section 38(1)(d) of the Act.

I find the tenant provided their forwarding address in writing pursuant to section 38(1)(b) during the previous hearing on November 20, 2020.

I find the tenant did not provide consent to the landlord to keep any portion of the security deposit pursuant to section 38(4)(a).

Based on the above, the testimony and evidence, and on a balance of probabilities, I find the landlord is in breach of the Act by failing to return the security deposit or applying for dispute resolution as required.

I find the tenant is entitled to a doubling of the security deposit.

Accordingly, I grant the tenant a monetary award in the amount as claimed.

As the tenant was successful in their application, I further grant the tenant reimbursement of the filing fee.

My award to the tenant is summarized as follows:

ITEM	AMOUNT
Security deposit	\$2,100.00
Double the Security Deposit	\$2,100.00
Reimbursement of the Filing Fee	\$100.00
TOTAL CLAIM	\$4,300.00

Conclusion

I order the landlord pay to the tenant the sum of **\$4,300.00**. I grant the tenant a Monetary Order in this amount.

The landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this order, the 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: May 04, 2021

Residential Tenancy Branch