



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- an order for the landlord to return the security deposit (the deposit), pursuant to section 38;
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

Issues to be Decided

Are the tenants entitled to:

- an order for the landlord to return the deposit?
- an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below. I explained Rule of Procedure 7.4 to the attending parties; it is the tenants' obligation to present the evidence to substantiate the application.

The tenants affirmed the tenancy started on December 01, 2020 and ended on December 15, 2020. The landlord stated the tenancy started on November 26 or 27, 2020 and ended on December 16 or 17, 2020. Both parties agreed monthly rent was \$2,300.00 due on the first day of the month. At the outset of the tenancy a deposit of \$1,150.00 was collected and the landlord currently holds it in trust.

Both parties agreed the tenancy was periodic and they did not sign a written tenancy agreement. The landlord confirmed receipt of the tenants' forwarding address in writing in December 2020 and did not apply for an authorization to retain the deposit. The tenants did not authorize the landlord to retain the deposit. This application was filed on February 10, 2021.

The tenant submitted into evidence a Direct Request Worksheet (RTB form 40) indicating the landlord did not return the \$1,150 deposit.

Analysis

The landlord's testimony about the date the tenancy ended was vague. Based on the tenants' convincing testimony, I find the tenancy ended on December 15, 2020.

I accept the undisputed testimony that the landlord received the tenants' forwarding address in writing in December 2020 and the tenants did not authorize the landlord to withhold the deposit. The landlord has not brought an application for dispute resolution claiming against the deposit and did not return the deposit.

Section 38(1) of the Act requires the landlord to either return the tenant's 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 or upon receipt of the tenant's forwarding address in writing.

Pursuant to section 38(6) of the Act, the landlord must pay a monetary award equivalent to double the value of the deposit:

(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.

Residential Tenancy Branch Policy Guideline 17 is clear that the arbitrator will double the value of the deposit when the landlord has not complied with the 15 day deadline; it states:

B. 10. The landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an application for dispute resolution claiming against the deposit.

[...]

11. If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

[...]

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:

-if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;

-if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;

Under these circumstances and in accordance with section 38(6)(b) of the Act, I find the tenants are entitled to a monetary award of \$2,300.00 (\$1,150.00 x 2).

Over the period of this tenancy, no interest is payable on the landlord's retention of the deposit.

As the tenants were successful in this application, the tenants are entitled to recover the \$100.00 filing fee.

For the purpose of educating both parties, I note that per section 13(1) of the Act, the tenancy agreement must be always in writing.

Conclusion

Pursuant to sections 38(6)(b) and 72 of the Act, I grant the tenants a monetary order in the amount of \$2,400.00.

This order must be served on the landlord by the tenants. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) to be 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: July 16, 2021

Residential Tenancy Branch