



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of double the amount of the tenants' security and pet damage deposits (collectively "deposits"), pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord and the "female tenant" did not attend this hearing, which lasted approximately 22 minutes. The male tenant ("tenant") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant confirmed that he had permission to represent the female tenant, who is his girlfriend, at this hearing (collectively "tenants").

The hearing began at 1:30 p.m. and ended at 1:52 p.m. I monitored the teleconference line throughout this hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only people who called into this teleconference.

At the end of this hearing, I informed the tenant that recording of this hearing was not permitted by Rule 6.11 of the Residential Tenancy Branch *Rules of Procedure*. The tenant affirmed, under oath, that he did not record this hearing.

At the outset of this hearing, I explained the hearing process to the tenant. He had an opportunity to ask questions. The tenant confirmed that he was ready to proceed with the hearing. He did not make any adjournment or accommodation requests.

The tenant stated that he served the landlord with the tenants' application for dispute resolution hearing package on March 24, 2021, to the rental unit address. He said that he was told by the downstairs tenant on January 20, 2021, that the landlord moved back there after the tenants moved out. The tenants provided a Canada Post receipt and the tenant confirmed the tracking number verbally during this hearing. He said that the package was unclaimed and returned to him as sender.

In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenants' application on March 29, 2021, five days after its registered mailing, to the address where the landlord was residing.

The tenant stated that he served the landlord with the tenants' application for dispute resolution hearing package again on April 16, 2021, to the service address provided by the landlord in the parties' written tenancy agreement. A copy of the tenancy agreement was provided for this hearing. The tenants provided a Canada Post receipt and the tenant confirmed the tracking number verbally during this hearing. He said that the package was delivered to the landlord.

In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenants' application on April 21, 2021, five days after its registered mailing, to an address provided by the landlord in the parties' tenancy agreement.

Issues to be Decided

Are the tenants entitled to a return of double the value of their deposits?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the tenants' documentary evidence and the testimony of the tenant, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

The tenant testified regarding the following facts. This tenancy began on February 15, 2019. The tenants moved out on January 10, 2021 but paid rent to the landlord until January 31, 2021. Monthly rent in the amount of \$2,300.00 was payable on the first day of each month. A security deposit of \$1,150.00 and a pet damage deposit of \$1,150.00 were paid by the tenants and the landlord continues to retain both deposits. A written tenancy agreement was signed by both parties. A move-in condition inspection report was completed for this tenancy, but a move-out condition inspection report was not completed.

The tenant stated the following facts. The tenants provided a written forwarding address, by way of a letter, dated January 20, 2021, that was sent to the landlord by registered mail to the service address provided by the landlord in the parties' written tenancy agreement, on the same date. The tenants provided a copy of the letter and the Canada Post receipt. The tenant confirmed the Canada Post tracking number verbally during this hearing. The tenants did not receive an application for dispute resolution from the landlord, to retain any amount from their deposits. The landlord did not have written permission to keep any amount from the tenants' deposits.

The tenant confirmed that the tenants seek a return of double the amount of their deposits of \$2,300.00, totalling \$4,600.00, plus the \$100.00 filing fee paid for this application.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenants' deposits or file for dispute resolution for authorization to retain the deposits, within 15 days after the later of the end of a tenancy and the tenants' provision of a 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 deposits. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the deposits to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony and evidence of both parties.

This tenancy ended on January 10, 2021. The tenants provided a written forwarding address by way of a letter, sent by registered mail to the landlord on January 20, 2021, to the service address provided by the landlord in the parties' written tenancy agreement. The landlord is deemed to have received the forwarding address letter on January 25, 2021, five days after its registered mailing, as per sections 88 and 90 of the *Act*. The tenants did not give the landlord written permission to retain any amount from the deposits. The landlord did not return the deposits or make an application for dispute resolution to claim against the deposits.

In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenants are entitled to receive double the value of their deposits of \$2,300.00, totalling \$4,600.00. There is no interest payable on the deposits during the period of this tenancy.

As the tenants were successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of \$4,700.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord 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: August 17, 2021

Residential Tenancy Branch