



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR

Introduction

This hearing, adjourned from a Direct Request process in which a decision is made based solely on the written evidence submitted by the landlord, dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of all or a portion of their security deposit plus compensation for the landlords' failure to comply with the Act pursuant to section 38.

The landlord SC attended the hearing with their translator AZ. ZL and CH appeared for the tenants. It is noted that English is not the primary language for both parties, but both parties confirmed that they were prepared to proceed with the scheduled hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The landlords confirmed receipt of the tenants' application ('Application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlords duly served with the Application and evidence. The landlords did not submit any written evidence for this hearing.

Issues(s) to be Decided

Are the tenants entitled to the return of their security deposit?

Are the tenants entitled to monetary compensation for the landlords' failure to comply with the *Act*?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony provided in the hearing, not all details of the respective submissions and / or arguments are reproduced here.

A copy of the tenancy agreement was submitted by the tenants for this hearing, which was written in Chinese. The details of this tenancy were confirmed with both parties in the hearing. This tenancy began on March 5, 2020, and ended on August 16, 2020. Monthly rent was set at \$1,300.00 payable on the first of the month. The landlord had collected a security deposit from the tenants in the amount of \$1,300.00, which the landlord still holds.

The tenants testified that they had provide a forwarding address to the landlords on February 12, 2021 by regular mail. The tenants testified that the landlords had refused to return their deposit to them, and that they have not provided written consent to the landlords to retain any portion of their deposit, nor have the landlords applied for dispute resolution in order to keep their deposit. The tenants are requesting the return of their deposit, as well as compensation for the landlords' failure to comply with section 38 of the *Act*.

The landlords confirmed in the hearing that they have not filed any applications to retain the tenants' security deposit. The landlords testified that they were out of the country, and therefore did not receive the tenants' forwarding address. The landlords testified that they attempted to message the tenants in order to return their deposit to them on March 30, 2021 in a different currency as they were out of the country, but did not receive a response from the tenants. The landlords testified that they had only recently returned to Canada in July of 2021. The landlords testified that they felt that they were entitled to keep the security deposit as the tenants failed to comply with the *Act*.

Analysis

Section 38(1) of the *Act* requires that landlords, within 15 days of the end of the tenancy or the date on which the landlords receive the tenants' forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlords to retain the deposit. If the landlords fail to comply with section 38(1), then the landlords may not make a claim against the deposit, and the landlords must return the tenants' security deposit and must pay the tenants a monetary award

equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenants' provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security deposit if at the end of a tenancy, the tenants agree in writing the landlords may retain the amount to pay a liability or obligation of the tenants.

In this case, I am satisfied that the tenants did provide their forwarding address to the landlords by mail on February 12, 2021 to the landlords' address. Section 88(c) of the *Act* allows for service of documents "by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord". Although the landlords did not pick up their mail as they were out of the country, I find that the tenants had met their obligations, and pursuant to sections 88 and 90 of the *Act*, I find the landlords deemed served with the tenants' forwarding address on February 17, 2021, 5 days after mailing. I find that the landlords were aware of the tenants' request for the return of their deposit, and had clearly confirmed in the hearing that they kept the deposit anyway.

There is no record that the landlords had applied for dispute resolution to obtain authorization to retain any portion of the tenants' security deposit. The tenants gave sworn testimony that the landlords had not obtained their written authorization at the end of the tenancy to retain any portion of their deposit. Although the landlord testified to having offered to return the tenants' deposit on March 30, 2021, I find that this was only after the tenants had filed their application under section 38 of the *Act*, and well after the required 15 days as set out by the *Act*. I find that the evidence and testimony supports the fact that the landlords were provided with the tenants' forwarding address and the return of their entire deposit, but the landlords failed to fulfill their obligations.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

Unless the tenants have 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 tenants' forwarding address is received in writing; ...*
- *whether or not the landlord may have a valid monetary claim.*

In this case, I find that the landlords have not returned the tenants' security deposit within 15 days of the provision of their forwarding address. In accordance with section 38 of the *Act*, I find that the tenants are therefore entitled to a monetary order amounting to double the original security deposit.

As a note for future reference, I find that the landlords had collected a security deposit in an amount that exceeds the allowable amount as set out in the Residential Tenancy Regulation. As set out in the Residential Tenancy Regulation, Schedule 2(1)(a)

The landlord agrees

(a) that the security deposit and pet damage deposit must each not exceed one half of the monthly rent payable for the residential property.

Conclusion

I issue a \$2,600.00 Monetary Order in the tenants' favour, which allows for the return of the original security deposit, plus a monetary award equivalent to the value of their deposit as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*.

Item	Amount
Return of Security Deposit	\$1,300.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	1,300.00
Total Monetary Order	\$2,600.00

The tenant(s) are provided with this Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlords 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: September 9, 2021

Residential Tenancy Branch