



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MND MNSD FF
Tenant: MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, at 1:30 pm on January 31, 2022. Both parties applied for multiple remedies under the *Residential Tenancy Act* (the “Act”).

The Landlords did not attend this hearing. However, the Tenants did. The Tenants stated they served their application, evidence, and Notice of Hearing to the Landlords by registered mail on October 21, 2021. Proof of mailing was provided. Pursuant to section 89 and 90 of the Act, I find the Landlord are deemed served with the Tenants’ package 5 days after it was mailed, on October 26, 2021.

This matter was set for hearing by telephone conference call at 1:30 pm (Pacific Time) on January 31, 2022. The Tenants attended the teleconference hearing and were ready to proceed; however, the Landlords did not attend. The line remained open while the phone system was monitored for 20 minutes and the Landlords did not call in during this time. Therefore, as the Landlords did not attend the hearing to support their own application, **I dismiss their claim, in full, without leave to reapply.**

Given the Landlord’s application against the Tenant’s security deposit is dismissed, without leave to reapply, I turn to the following portion of Policy Guideline #17:

C. RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH DISPUTE RESOLUTION

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:
 - a landlord’s application to retain all or part of the security deposit; or

- *a tenant's application for the return of the deposit.*

unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

[...]

3. 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;*
- if the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the dispute resolution process;*
- if the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- whether or not the landlord may have a valid monetary claim.*

[My emphasis added]

There is no evidence before me to show that the Tenants extinguished their right to claim against the deposit. The Tenants stated they moved out of the rental unit on June 30, 2021, and sent their forwarding address to the Landlords, via registered mail, on July 13, 2021. Proof of mailing was provided for this package. The Tenants stated that they paid a security deposit of \$1,000.00, and have yet to receive any of the deposit back.

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

Pursuant to section 88 and 90 of the *Act*, I find the Landlords are deemed served with the Tenants' forwarding address, in writing, on July 18, 2021, the fifth day after it was mailed to

the Landlords at the residence. I also find the tenancy ended on June 30, 2021, the day the Tenants moved out. I note the Landlords filed this application, on July 15, 2021, for damage to the rental unit, and the claim against the security deposit. Although the Landlords applied against the deposit within the acceptable time frame (within 15 days of receiving the forwarding address or the end of the tenancy, whichever is later), I find that by not showing up to this hearing, it is the same as not filing any application against the deposit. Filing an application, and not following through with it is equivalent, for the purposes of the return of the security deposit, to not filing an application at all.

In accordance with section 38(6) of the Act, and the above noted Policy Guideline, I find the Tenants are entitled to the return of double the security deposit (\$1,000.00 x 2). Further, pursuant to section 72, I award the Tenants the recovery of the filing fee paid (\$100.00). In total, I award the Tenants \$2,100.00.

I issue a monetary order in favour of the Tenants for \$2,100.00

Since the Tenants failed to apply to dispute their rent increase, and only applied for the return of their security deposit, I decline to make any findings on their request for the return of their rent overpayments. The rent overpayment issue is dismissed, with leave.

Conclusion

The Tenants are granted a monetary order pursuant to Section 67 in the amount of **\$2,100.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenants may file the order in the Provincial Court (Small Claims) and 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: January 31, 2022

Residential Tenancy Branch