



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSDB-DR, FFT**

Introduction

This hearing, reconvened from an ex parte Direct Request proceeding, dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary award pursuant to section 67;
- authorization to obtain a return of their deposit pursuant to section 38; and
- authorization to recover the filing fee from the landlord pursuant to section 72.

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

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The landlord testified that they received the tenant's materials and had not served any evidence of their own. Based on their testimonies I find the landlord duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation for the return of a security deposit and a pet damage deposit pursuant to sections 38 and 67 of the Act? Are the tenants entitled to recover the filing fee for this application pursuant to section 72 of the Act?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This periodic tenancy originally began in 2017 between the tenants and the owner of the rental property at that time. The tenants paid a security deposit of \$875.00 and pet damage deposit of \$875.00 at the start of the tenancy. The respondent landlord assumed this tenancy when they purchased the rental property on May 21, 2021.

The tenancy ended in accordance with a 2 Month Notice to End Tenancy for Landlord's Use dated March 27, 2021. The 2 Month Notice is signed by the previous owner of the property and provides the reason for the tenancy to end is that "*All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.*" The respondent landlord is listed as the purchaser of the rental property. The parties agree the tenancy ended on May 31, 2021, in accordance with the 2 Month Notice.

The tenants provided a forwarding address in writing to the landlord on June 17, 2021. The tenants have not authorized the landlord to hold any portion of the security or pet damage deposit for this tenancy. No condition inspection report was prepared at any time by any landlord.

The landlord testified that they were given conflicting advice from their realtor and legal counsel regarding their obligation to provide the tenants with a return of the security and pet damage deposit. The landlord said that there was no indication that the deposits were transferred when the sale of the rental property completed.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's 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 or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit.

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 as per section 38(4)(a).

I find that the landlord assumed the tenancy when they purchased the rental property on May 21, 2021. At that point the landlord assumed all of the obligations under the *Act* pertaining to an end of the tenancy and returning the deposits.

While I accept that the landlord was given contradictory advice from different sources, I find this does not excuse the landlord from their duties under the *Act* and regulations. I further accept the submission of the landlord that they are uncertain if the security and pet damage deposit were transferred as part of the sale of the property. I find the terms of the sale between the former property owner and the landlord to be beyond the purview of the *Act* and this Branch.

In this circumstance, I find the landlord was obligated under the *Act* to either file an application for authorization to retain the deposits or return them in full to the tenants within 15 days of receipt of their forwarding address.

I accept the undisputed evidence of the parties that the forwarding address was provided in writing on June 17, 2021. I find that the landlord has neither applied for dispute resolution nor returned the tenant's security deposit in full within the required 15 days. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenants are entitled to an \$3,500.00 Monetary Order, double the value of the security and pet damage deposit paid for this tenancy. No interest is payable over this period.

As the tenants were successful in their application, they are entitled to recovery of the \$100.00 filing fee.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$3,600.00. 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: February 11, 2022

Residential Tenancy Branch