



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

This hearing was convened in response to an application from the tenants pursuant to the *Residential Tenancy Act* (“*Act*”) for:

- a return of the filing fee pursuant to section 72 of the *Act*;
- a monetary award pursuant to section 67 of the *Act*; and
- an order directing the landlord to return the security deposit pursuant to section 38 of the *Act*.

Tenants Ma.L. and M.L. appeared at the hearing on behalf of the tenants, while A.T. attended for the landlords. All parties present, were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The parties confirmed they were not recording the hearing pursuant to section 6.11 of the Rules of Procedure.

The tenants testified that they served landlords A.T. and V.T. individually with applications for dispute and evidence on April 21, 2022. A copy of the individual Canada Post registered mail tracking numbers was provided at the hearing. A.T. acknowledged receiving the documents but stated nothing was received by his wife, V.T. A.T. is found to have been served in accordance with section 71(2)(b), while pursuant to sections 88, 89 and 90 of the *Act*, V.T. is deemed served on April 26, 2022, with the application for dispute and evidentiary package.

Landlord A.T. confirmed no evidence was submitted to the tenants.

Issue(s) to be Decided

Are the tenants entitled to a monetary award? Can the tenants recover their security and pet deposits? Can the tenants recover their filing fee?

Background and Evidence

The parties confirmed this tenancy ran from October 1, 2020 to July 12, 2021. Rent was \$4,000.00 per month and deposits of \$2,200.00 (security) and \$1,000.00 (pet) paid at the outset of the tenancy continue to be held by the landlords.

The tenants have applied for a return of their deposits along with a monetary award of \$353.49.

At the outset of the hearing the landlord questioned his being named in the application. The tenants applied for dispute naming A.T. and V.T. as the respondent landlords. Only A.T. attended the hearing. A.T. argued that he was simply a shareholder, and he provided a corporate business, T.E. 1985 Ltd. as the true landlord. The tenants said they wished to proceed with their application as it was submitted.

The parties provided conflicting information regarding a move-in and move-out inspections. The tenants alleged that none was performed at move-in, while landlord A.T. stated one was performed between the parties on September 23, 2020. Both parties confirmed no move-out inspection was performed, however, landlord A.T. alleged that the tenants abandoned the property and failed to provide their forwarding address. No copies of any inspection reports were submitted in evidence and none were exchanged between the parties.

The tenants explained they gave their forwarding address to the landlord V.T. and A.T. by way of Canada Post Registered Mail on October 7, 2021. A copy of the Canada Post tracking numbers was provided at the hearing. The landlords are therefore deemed served with this address on October 12, 2021, pursuant to sections 88 and 90 of the *Act*.

Analysis – Standing of Landlord

As noted in the background and evidence, landlord A.T. argued that he and V.T. were incorrectly named as landlords. A.T. argued that the property was in fact owned by a corporate landlord and he was merely a shareholder.

A review of the tenancy agreement shows that it is an agreement entered into by T.E. 1985 Ltd. and the tenants. The tenancy agreement is signed on August 6, 2020, by landlord A.T. in the area marked 'Agreed and signed by Landlord/Landlord's Agent.

Section 1 of the *Act* defines landlord at subsection (a) as the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord, permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under this Act, the tenancy agreement or a service agreement.

As A.T. has signed the tenancy agreement under the area marked 'Agreed and signed by Landlord/Landlord's Agent', I find that he has acted in the capacity of a landlord as defined in section 1 of the *Act* and is therefore properly named. I find there is no indication that V.T. has any standing as a landlord and remove her from the proceeding pursuant to section 64(3)(c) of the *Act*.

Analysis

During the hearing, I explained to the tenants that I would not award them any amount of the \$353.49 for which they applied. The parties previously had two hearings before the RTB on April 26, 2021 and May 26, 2021. In these hearings the parties reached an agreement whereby the tenants agreed to vacate the property on July 31, 2021 and pay rent of \$4,000.00 for June 2021 and \$2,000.00 for July 2021.

The tenants sought a return of the funds related to the time period between their departure from the rental home on July 12, 2021 and July 31, 2021. The tenants were under no obligations to vacate the until early and did so under their own volition. Rent is due pursuant to section 26, "whether or not the landlord complies with this Act, the regulations or the tenancy agreement unless the tenant has a right under this Act to deduct all or a portion of the rent." While the tenants argued they were disturbed by the landlord's father, I find that rent was due in the present circumstances, and they agreed to pay a lesser amount in the above cited settlement agreement.

This leaves me to consider the tenants application for a return of the pet and security deposits.

Section 24(2) states, "the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to the residential property is extinguished if the landlord does not comply with section 23(2) [2 opportunities for inspection], having complied with section 23(3), does not participate on either occasion, or does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Section 36 explains the steps that must be taken by both the tenant and the landlord at the conclusion of the tenancy.

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(1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if:

- (a) the landlord complied with section 35 (2) *[2 opportunities for inspection]*, and
- (b) the tenant has not participated on either occasion.

(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord:

- (a) does not comply with section 35 (2) *[2 opportunities for inspection]*,
- (b) having complied with section 35 (2), does not participate on either occasion, or
- (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

After having reviewed the evidence submitted by the tenant and following a consideration of the testimony from both parties I find that the tenancy ended on July 31, 2021 by way of mutual agreement following the settlement reached at the April 26, 2021 and May 26, 2021 hearings. I note the tenants vacated the unit on July 12, 2021, however, the agreement reached in the prior RTB hearings clearly show that the tenancy was to end on July 31, 2021.

I find the landlord had no right to claim to retain the deposits due to their failure to follow the requirements of sections 24 or 36 as noted above. While the parties provided conflicting testimony related to a move-in inspection, I find the landlord did not complete or provide the tenants with copies either of the move-in or move-out inspection reports.

The landlord acknowledged at the hearing that no move-out inspection was performed but argued this was because the tenants had abandoned the property. Even if I accept this evidence, I find the landlords failed to provide the tenants with two opportunities for an inspection after July 31, 2021, when the tenancy ended by way of mutual agreement. The landlord argued he did not have the tenants forwarding address, however, there is little evidence that any opportunity was made to serve the tenants with requests for an inspection or that the landlord completed an inspection report.

Section 38 of the *Act* requires the landlord to either return a tenant's security or pet 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 and upon receipt of the tenant's forwarding address in writing.

As noted above the landlords are barred from applying to retain the deposits. A copy of the tenants' forwarding address was provided by Canada Post Registered mail on October 7, 2021 and deemed served on October 12, 2021. The landlord therefore had 15 days following receipt of this address to return the deposits. Since this did not occur, the landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security or pet deposit, or both.

I therefore award the tenants double their pet and security deposit. As the tenants were successful in their application, they may recover the \$100.00 filing fee.

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$6,500.00 against the landlord. The tenants are provided with a Monetary Order in the above terms and 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.

Item	<u>Amount</u>
Return of security deposit per s.38 (2 x \$2,200.00)	\$4,400.00
Return of pet deposit per s.38 (2 x \$1,000.00)	2,000.00
Return of filing fee	100.00
Total =	\$6,500.00

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: May 25, 2022

Residential Tenancy Branch