



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC MNSD FFT

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The tenants applied for monetary order in the amount of \$4,800.00 for compensation for 1 month of rent for being served with a 2 Month Notice to End Tenancy for Landlord's Use of Property dated July 10, 2021 (2 Month Notice) and for the return of double their security deposit and pet damage deposit.

The tenant, MB (tenant) attended the teleconference hearing. The tenant gave affirmed testimony, was provided the opportunity to present their evidence orally and in documentary form prior to the hearing and make submissions during the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated November 3, 2021 (Notice of Hearing), the application and documentary evidence were considered. The tenant provided affirmed testimony that the Notice of Hearing, application and documentary evidence were served on the landlord by registered mail on November 4, 2021. The tenant provided a registered mail tracking number in evidence and confirmed that the name and address on the registered mail package matched the name of the landlord and the address provided by the landlord on the tenancy agreement. For ease of reference, the registered mail tracking number has been included on the cover page of this decision.

According to the Canada Post online registered mail tracking website, the landlord did not pick up their registered mail and it was returned to sender as "unclaimed" on November 9, 2021. Section 90 of the Act, states that documents served by registered mail are deemed served 5 days after they are mailed. As a result, I find the landlord was

deemed served with the Notice of Hearing, application and documentary evidence on November 9, 2021.

As the landlord was deemed served and did not attend the hearing, I consider this matter to be undisputed by the landlord and the hearing proceeded without the landlord present in accordance with the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rules 7.3 and 7.4.

As the filing fee was already waived, it will not be considered further.

Issues to be Decided

- Are the tenants entitled to the return of double their security deposit and pet damage deposit under the Act?
- Are the tenants entitled to one month of compensation due to being served with a 2 Month Notice under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on January 15, 2018 and converted to a month-to-month tenancy after January 15, 2019. Monthly rent was \$1,800.00 during the tenancy and the tenants paid a security deposit of \$900.00 and a pet damage deposit of \$900.00 (\$1,800.00 combined deposits), which the landlord continues to hold, according to the tenants.

The tenant testified that the landlord served the 2 Month Notice dated July 10, 2021 with an effective vacancy date of October 1, 2021. The tenant confirmed they accepted the 2 Month Notice and did not dispute it. The tenant testified and supported their testimony with documentary evidence that they provided their notice on August 6, 2021 that they would be vacating the rental unit early on September 6, 2021. The landlord responded on August 6, 2021 confirming that they received their notice to vacate early. The tenants are seeking \$1,200.00 for the pro-rated amount between September 6, 2021 to October 1, 2021, which I will address later in this Decision.

The tenant also presented their written forwarding address (RTB Form #47) dated October 7, 2021, which was mailed via registered mail. A second registered mail tracking number has been included on the cover page of this decision for ease of reference. According to the Canada Post online registered mail tracking website, the landlord signed for and accepted that registered mail package on October 13, 2021. As

a result, I will deal with the written forwarding address later in this Decision. The tenant confirmed that the landlord has failed to return any portion of their \$1,800.00 in combined deposits. The tenant confirmed that no permission was granted for the landlord to retain any portion of their combined deposits.

Analysis

Based on the above, and the undisputed documentary evidence and undisputed testimony of the tenant, and on a balance of probabilities, I find the following.

The tenant confirmed that they did not provide permission for the landlord to retain any portion of their \$1,800.00 in combined deposits. I am also satisfied that the tenant provided their written forwarding address through registered mail and that the landlord signed for an accepted that written forwarding address as of October 13, 2021. I also accept the tenants undisputed testimony that the landlord has not returned any amount of their security deposit. As a result, section 38 of the Act applies and states:

Return of security deposit and pet damage deposit

38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

[emphasis added]

Based on the above, I find the landlord has breached section 38 of the Act by failing to return or claim against the tenants' combined deposits. In reaching this finding I have considered that there is no evidence before me that the landlord applied to return the

tenants' combined deposits or had written permission to retain any amount of the combined deposits.

The security deposit is held in trust for the tenants by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an arbitrator, or the written agreement of the tenant. In the matter before me, I find the landlord did not have any authority under the Act to keep any portion of the security deposit and did not return the security deposit to the tenants within 15 days of October 13, 2021 as required by the Act.

Section 38(6) of the Act provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant **double** the amount of the security deposit. The legislation does not provide any flexibility on this issue.

As a result, I find the tenants have met the burden of proof and I grant the tenant **\$3,600.00**, which is double their original \$1,800.00 in combined deposits, pursuant to section 67 of the Act.

Regarding the compensation for September 6, 2021 to October 1, 2021, I find that September 6, 2021 was the day they were vacating so the compensation must run between September 7, 2021 as they were still occupy the rental unit for a portion of September 6, 2021 until September 30, 2021 as October 1, 2021 was a new month and new rent would normally be due, which the landlord did not charge for. As such, I find the tenant is entitled under section 50 of the Act, to reimbursement of 24 days of September 2021 rent as follows:

September 2021 rent normally was $\$1,800.00 \div 30 \text{ days} = \60.00 daily rate

24 days x \$60.00 daily rate = \$1,400.00

As the tenant is only claiming \$1,200.00, I do not grant more than the \$1,200.00 claimed and I award the tenant \$1,200.00 as claimed for early notice pursuant to section 50 of the Act, once served with the 2 Month Notice. Find the landlord breached section 50 of the Act. Given the above, I find the tenant has established a total monetary claim of **\$4,800.00**, comprised of \$3,600.00 for double the combined deposits and \$1,200.00 for the early notice compensation under section 50 of the Act.

I caution the landlord not to breach sections 38 and 50 of the Act in the future.

Conclusion

The tenant's application is fully successful. The landlord has been cautioned not to breach sections 38 and 50 of the Act in the future.

The tenant is granted a monetary order in the amount of \$4,800.00 as described above. The monetary order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The landlord is cautioned that they can be held liable for all costs related to enforcement of the monetary order.

The decision will be emailed to the parties.

The monetary order will be emailed to the tenants only for service on the landlord.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: June 20, 2022

Residential Tenancy Branch