



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSDS-DR FFT**

Introduction

This hearing was convened as a result of the Tenants' application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") for:

- an order for the return of the Tenants' security deposit pursuant to section 38; and
- authorization to recover the filing fee for the Application from the Landlord pursuant to section 72.

The Landlord did not attend this hearing, although I left the teleconference hearing connection open until 2:01 pm in order to enable the Landlord to call into this teleconference hearing scheduled for 1:30 pm. The two Tenants ("AG" and "SS") attended the hearing and they were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that AG, SS and I were the only ones who had called into this teleconference.

This hearing was reconvened from a non-participatory, *ex parte*, "direct request" proceeding. In an interim decision dated February 23, 2022 ("Interim Decision"), the presiding adjudicator determined that a participatory hearing was necessary to address questions that could not be resolved on the documentary evidence submitted by the Tenants. As a result, this hearing was scheduled and came on for hearing on September 26, 2022, to consider the Application. Notices of the reconvened hearing, and a copy of the Interim Decision, were served on the parties by the Residential Tenancy Branch ("RTB"), in accordance with section 89 of the Act.

AG stated the Tenants served the Notice of Dispute Resolution Proceeding and some of their evidence (collectively the “NDRP Package”) for the original hearing were served on the Landlord by registered mail on February 3, 2022. AG submitted a signed and witnessed Proof of Service on Form RTB-50 (“Proof of Service”) and a copy of the Canada Post receipt to corroborate his testimony on service of the NDRP Package on the Landlord. Based on the undisputed testimony of AG, I find the NDRP Package was served on the Landlord by registered mail in accordance with the provisions of section 89 of the Act. Pursuant to section 90 of the Act, I find the Landlord was deemed to have been served with the NDRP Package on February 8, 2022.

AG stated the Tenants served additional evidence on the Landlord by registered mail on February 27, 2022. AG provided the Canada Post registered mail tracking number for service of the Tenants’ additional evidence on the Landlord. Based on the undisputed testimony of AG, I find the Landlord was served with the Tenants’ additional evidence in accordance with section 88 of the Act. Pursuant to section 90 of the Act, I find the Landlord was deemed to have been served with the Tenants’ additional evidence on March 4, 2022.

AG stated the Tenants were not served with any evidence from the Landlord for this proceeding.

Issues to be Decided

Are the Tenants entitled to:

- a monetary order of \$1,000.00, representing the return of double the security deposit?
- recover the filing fee of the Application from the Landlord?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

AG stated the Landlord and Tenants entered into a written tenancy agreement but the Landlord did not provide the Tenants with a signed copy of the tenancy agreement even though the Tenants made repeated requests for the Landlord to provide a copy. AG stated the tenancy commenced on October 1, 2021, on a month-to-month basis, with

rent of \$1,000.00 payable on the 1st day of each month. AG stated the Tenants paid a security deposit of \$500.00. AG submitted into evidence a copy of a bank confirmation that a total of \$1,500.00 was e-transferred to the Landlord on October 1, 2021 which represented \$1,000.00 for the rent for October 1, 2021 and \$500.00 for the security deposit. AG stated the Tenants vacated the rental unit on November 30, 2021. AG stated the Tenants did not share kitchen and/or bathroom facilities with the Landlord.

AG stated the Tenants received a written notice from the Landlord that stated the Tenants were required to vacate the rental unit by November 30, 2021. After asking several questions regarding the form and content of the notice the Landlord served on the Tenants to end the tenancy, it did not appear that the written notice from the Landlord was made on a form of the RTB which is approved for ending a tenancy. Notwithstanding this, AG stated the Tenants vacated the rental unit on November 30, 2021. Based on AG's undisputed testimony, I find there was a tenancy for the rental unit between the Landlord and Tenants that commenced on October 1, 2021 and ended on November 30, 2021.

AG stated the Tenants served the Landlord with their forwarding address by mail on December 28, 2021. AG submitted a signed copy of the Tenants' Notice of Forwarding Address dated December 27, 2021 on Form RTB-47 ("Tenants' Notice") and a signed and witnessed copy of a Proof of Service dated December 28, 2021 on Form RTB-41 to corroborate his testimony. Based on AG's undisputed testimony, I find the Tenants served their forwarding address on the Landlord in accordance with the provisions of section 88 of the Act. AG stated the Landlord told the Tenants that she would not be returning the Tenants' security deposit because she claimed the Tenants had damaged the washing machine. AG stated the Landlord has never returned the Tenants' security deposit of \$500.00.

Analysis

Section 38(1) of the Act states:

- 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.

Based on the undisputed testimony of AG, I find the tenancy ended on November 30, 2021. Pursuant to the undisputed testimony of AG, I find the Tenants paid the Landlord \$500.00 for a security deposit. AG submitted a completed RTB-47 and Proof of Service on Form RTB-41 to demonstrate the Tenants served the Landlord with the Tenants' Notice by mail on December 28, 2021. Pursuant to section 90 of the Act, I find the Landlord was deemed to have received the Tenants' Notice on January 2, 2021. Pursuant to section 38(1) of the Act, I find the Landlord had 15 days, or until January 17, 2022, to either return the security deposit to the Tenants in full, or alternatively, to make an application for dispute resolution to make a claim for damages and/or unpaid rent. There is no evidence before me that the Landlord made an application for dispute resolution to make a claim for damages and/or unpaid rent. AG stated the Landlord has never returned the security deposit to the Tenants. Based on the foregoing, I find the Landlord has not complied with the requirements of section 38(1) of the Act.

As the Tenants served the Tenants' Notice on the Landlord within one year of the end of the tenancy, I find the Tenants' right to the return of the security deposit has not been extinguished by either section 24 or 36 of the Act.

Section 38(6) of the Act states:

- 38(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 in italics added]

As the language of section 38(6) is mandatory, I am required to order the Landlord pay the Tenants an amount equal to double the amount of the security deposit. As such, I order the Landlord to pay the Tenants double the amount of the security deposit for a total of \$1,000.00.

As the Tenants have been successful in the Application, they may recover the \$100.00 filing fee from the Landlord pursuant to section 72(1) of the Act.

Conclusion

Pursuant to sections 38.1 and 72 of the Act, I order that the Landlord pay the Tenants \$1,100.00 calculated as follows:

Description	Amount
Return of 2 x Security Deposit of \$500.00	\$1,000.00
Recovery of Filing Fee of Application	\$100.00
Total	\$1,100.00

The Tenants must serve this decision and attached order on the Landlord as soon as possible after receiving a copy of it from the Residential Tenancy Branch.

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 27, 2022

Residential Tenancy Branch