



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSD FFT**

Introduction

This hearing was reconvened by way of conference call in response to the Tenants' application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") in which the Tenants seek:

- an order to seek the return of all of the security deposit and/or pet deposit pursuant to section 38; and
- authorization to recover the filing fee of the Application from the Landlord pursuant to section 72.

The Landlord did not attend this hearing scheduled for 1:30 pm. I left the teleconference hearing connection open for the entire hearing, which ended at 1:50 pm, in order to enable the Landlord to call into this teleconference hearing. One of the two Tenants ("YL") attended the hearing and was 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 ("NDRP"). I also confirmed from the teleconference system that YL and I were the only ones who had called into this teleconference.

YL testified she served the Landlords with the NDRP and her evidence (collectively the "NDRP Package") on the Landlord by Xpresspost on February 9, 2022. YL submitted into evidence a Canada Post receipt and the tracking number for service of the NDRP Package on the Landlord. Based on the undisputed testimony of YL, I find the NDRP Package was served on the Landlord in accordance with sections 88 and 89 of the Act. I find that, pursuant to section 90, the Landlord was deemed to have been served with the NDRP Package on February 14, 2022.

YL testified the Landlord did not serve any evidence on the Tenants.

Issues to be Decided

Are the Tenants entitled to:

- a monetary order of \$1,900.00 representing an amount equal to double the security deposit?
- recover the filing fee for 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.

YL submitted into evidence a signed copy of the tenancy agreement dated April 19, 2020 between the Landlord and the two Tenants. YL stated the tenancy commenced on May 1, 2020, with a fixed term ending November 30, 2022, with rent of \$1,900.00 payable on the 1st day of each month. YL stated the Tenants were required to pay a security deposit of \$950.00 by April 19, 2020. YL testified the Tenants paid the security deposit to the Landlord.

YL stated the Tenants vacated the rental unit on January 31, 2021. YL stated the Tenants served a notice ("Address Notice"), which provided their forwarding address, to the Landlord by registered mail on February 24, 2022. YL submitted into evidence a copy of the Address Notice to corroborate her testimony. YL testified the Landlord has never returned the security deposit to the Tenants.

YL stated the Tenants are seeking an amount equal to two times the amount of the security deposit, being \$1,900.00.

Analysis

Sections 38(1), 38(6) and 39 of the Act state:

- 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.

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.*

39 Despite any other provision of this Act, if a tenant *does not give a landlord a forwarding address in writing within one year after the end of the tenancy,*

- (a) *the landlord may keep the security deposit or the pet damage deposit, or both, and*
- (b) *the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.*

[emphasis in italics added]

Based on the undisputed testimony of the YL, I find the tenancy ended on January 31, 2021. Pursuant to section 39 of the Act, the Tenants had until January 31, 2022 to serve the Landlord with their forwarding address in writing. Based on the undisputed testimony of the YL, I find the Tenants served the Address Notice on the Landlord by registered mail on February 24, 2022. Pursuant to section 90 of the Act, the Landlord was deemed to have received the Address Notice on February 5, 2022, being five days after the date of posting. As such, the Tenants did not give the Address Notice to the Landlord for more than one year after the tenancy ended on February 24, 2021. Pursuant to section 39(b), the right of the Tenants to the return of the security deposit has been extinguished. Based on the foregoing, I find the Tenants are not entitled to the return of their security deposit pursuant to section 39(b) of the Act and, therefore, they are not entitled to seek an amount equal to double the security deposit pursuant to section 38(6) of the Act. As such, I dismiss the Application in its entirety without leave to reapply.

Conclusion

The Application is dismissed in its entirety without leave to reapply.

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 2, 2022

Residential Tenancy Branch