



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

On May 26, 2022, an Adjudicator appointed pursuant to the *Residential Tenancy Act* (the “Act”) adjourned the Tenant’s application for dispute resolution to a participatory hearing. She did so on the basis of an *ex parte* hearing using the Residential Tenancy Branch’s direct request process. The adjudicator adjourned the direct request for the following reasons:

I find that the landlord’s address on the Application for Dispute Resolution by Direct Request does not match the landlord’s address listed on the tenancy agreement and all other documents submitted with the Application.

I also note that section 12(1)(b) of the Residential Tenancy Regulation establishes that a tenancy agreement is required to “be signed and dated by both the landlord and the tenant.”

I find that the residential tenancy agreement submitted by the tenants is not signed by the landlord, which is a requirement of the Direct Request process.

I find these discrepancies raise questions that can only be addressed in a participatory hearing.

This hearing dealt with the Tenants’ application under the Act for:

- return of double the security deposit in the amount of \$4,074.00 pursuant to section 38.1; and
- authorization to recover the filing fee from the Landlord pursuant to section 72.

The Landlord, the Landlord's assistant WF, and one of the Tenant, RWP, attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

All attendees at the hearing were advised that the Residential Tenancy Branch Rules of Procedure prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

RWP indicated the Tenants had sent the Notice of Dispute Resolution Proceeding – Direct Request package and the Tenant's initial evidence (collectively, the "Direct Request Package") to the Landlord via registered mail. The tracking number for the Direct Request Package is the first of three tracking numbers referenced on the cover page of this decision. Tracking records for the Direct Request Package indicate that it was sent on April 28, 2022 and delivered on April 29, 2022.

RWP confirmed the Tenants sent the Notice of Dispute Resolution Proceeding package and additional documentary evidence for this hearing (collectively, the "NDRP Package") to the Landlord via registered mail. The tracking number for the NDRP Package is the second tracking number referenced on the cover page of this decision. Tracking records for the NDRP Package indicate that it was sent on May 28, 2022 and delivered on May 31, 2022.

The Landlord acknowledged receipt of the Direct Request Package and the NDRP Package. I find the Landlord was served with these documents in accordance with sections 88 and 89 of the Act.

RWP acknowledged receipt of the Landlord's documentary evidence. I find the Tenants were served with the Landlord's evidence in accordance with section 88 of the Act.

Preliminary Matter – Adjudicator's Concerns

Based on RWP's testimony, I find the Tenants had made a mistake with the Landlord's address on this application which was later corrected. During the hearing, the Landlord also confirmed her address. Pursuant to section 64(3)(c) of the Act, I have corrected the Landlord's address on this application and I find that this resolves the first concern raised by the adjudicator in the interim decision dated May 26, 2022 (the "Interim Decision").

The parties agreed that they had signed a tenancy agreement and a fully signed copy has been submitted into evidence. I find this resolves the second concern raised by the adjudicator in the Interim Decision.

Issues to be Decided

1. Are the Tenants entitled to the return of double the security deposit?
2. Are the Tenants entitled to reimbursement of the filing fee?

Background and Evidence

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

The Tenants contacted the Landlord in response to her advertisement to rent the rental unit on March 5, 2022. On March 6, 2022, the Tenants returned a copy of the tenancy agreement signed by the Tenants to the Landlord via email. A copy of the agreement submitted into evidence shows that it was also signed by the Landlord, dated March 6, 2022. This agreement states that the tenancy was to commence on March 15, 2022 at a monthly rent of \$3,975.00, and the Tenants were to pay a security deposit of \$1,987.00.

On March 6 and 7, 2022, the Tenants sent the Landlord two e-transfers totalling \$5,962.00, which were for covering the \$1,987.00 security deposit and \$3,975.00 in rent for the first month.

The parties had further communications over email about certain conditions pertaining to the tenancy, which the parties were ultimately unable to agree on.

On March 13, 2022, the Tenants sent an email to the Landlord informing her that the Tenants will “search for another rental” and requested the return of the security deposit and one month’s rent by the next day, March 14, 2022.

On March 14, 2022, the Landlord replied to confirm that she received the Tenant’s “request to cancel the lease agreement [...] signed on March 6th”. This email explained

the Landlord's view that the Tenants were in breach of the parties' written tenancy agreement.

According to RWP, the Tenants did not receive a fully signed copy of the tenancy agreement from the Landlord until March 14, 2022.

The Tenants never received the keys to the rental unit and never took possession.

On April 6, 2022, the Landlord emailed the Tenants offering to return the security deposit and half of one month's rent. On April 7, 2022, the Tenants advised that they will be seeking the return of double the security deposit.

Records of the Residential Tenancy Branch indicate the Landlord made an application to retain the Tenants' security deposit on April 11, 2022 (file number referenced on the cover page of this decision), and a hearing was scheduled for June 6, 2022.

The Tenants submitted this application on April 19, 2022. In the Direct Request Package sent to the Landlord, the Tenants had included a letter with the Tenant's forwarding address dated March 23, 2022, as well as proof of service indicating that this letter was sent to the Landlord via registered mail on March 23, 2022 and delivered on March 25, 2022 (see third tracking number on cover page of this decision).

There is some disagreement regarding the delivery of the March 23, 2022 forwarding letter. The Landlord denied having received this letter via registered mail. The Landlord testified that she did not receive any registered mail package from the Tenants in March 2022. The Landlord testified that she did not see this package until after April 7, 2022, after the Tenants already advised that they would be seeking double the security deposit. The Landlord stated that she decided to make an application because the Tenants sought to recover double the deposit.

RWP acknowledged that he had made a mistake with the Landlord's address on the application form for this application, but testified that the Tenants' registered mail packages (the March 23, 2022 forwarding address letter, the Direct Request Package, and the NDRP Package) were sent to the Landlord's correct address. The Landlord testified that her unit number had been crossed out and corrected on one of the envelopes she received. RWP testified that he was the person who had crossed out and corrected the unit number. RWP referred to tracking records for each of the three deliveries to show that they had been signed for by signatories named HH, GG, and HF.

The Landlord acknowledged receipt of the Direct Request Package and NDRP Package. The Landlord agreed that she received a different forwarding address letter from the Tenants dated May 27, 2022 (Appendix 2.11 of the Tenants' evidence) in the NDRP Package. However, the Landlord denied that she had signed for or received any of the registered mail packages from the Tenants in person. The Landlord indicated that she had found the packages in her mailbox instead. The Landlord stated that she does not go to her mailbox often.

The Landlord's application resulted in a decision dated June 6, 2022 (the "Previous Decision"), in which the Landlord's application was dismissed with leave to re-apply, because the Landlord did not serve the Tenants with notice of the hearing. The Landlord testified that she did not understand she needed to serve the Tenants. The Landlord submitted a copy of the Previous Decision into evidence. The Previous Decision contains the following excerpt:

As stated in the hearing, the Notice of Dispute Resolution Proceeding is a fundamental and critical document that contains necessary hearing particulars regarding the claim, the rules, and the rights of the parties. Given this document was not served to the Respondents, I dismiss the Landlord's application, in full, with leave to reapply.

Further, I do not have sufficient information before me to make any determinations with respect to the return of the security deposit, or the Landlord's right to retain it. This aspect of the Landlord's application is also dismissed with leave to reapply, along with any claim for compensation for lost rent or damage or loss under the Act. However, it is important to note that any statutory deadlines with respect to the return of the security deposit or any other provisions of the Act, are not extended.

On July 25, 2022, the Landlord sent an e-transfer of \$1,987.00 to RWP, which was not accepted and eventually cancelled on August 1, 2022.

Analysis

1. Are the Tenants entitled to the return of double the security deposit?

Section 38(1) of the Act 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.

Section 38.1(1) of the Act states:

Order for return of security and pet damage deposit

38.1(1) A tenant, by making an application under Part 5 [*Resolving Disputes*] for dispute resolution, may request an order for the return of an amount that is double the portion of the security deposit or pet damage deposit or both to which all of the following apply:

- (a) the landlord has not applied to the director within the time set out in section 38 (1) claiming against that portion;
- (b) there is no order referred to in section 38 (3) or (4) (b) applicable to that portion;
- (c) there is no agreement under section 38 (4) (a) applicable to that portion.

(2) In the circumstances described in subsection (1), the director, without any further dispute resolution process, may grant an order for the return of the amount referred to in subsection (1) and interest on that amount in accordance with section 38 (1) (c).

In this case, I find the Tenants paid the \$1,987.00 security deposit to the Landlord on March 6, 2022, with an anticipated move-in date of March 15, 2022. I find the Tenants notified the Landlord on March 13, 2022 to end the tenancy, which the Landlord acknowledged on March 14, 2022. As such, I find the tenancy ended on March 14, 2022. I note that since it is not relevant to this application, I make no finding on the

merits as to whether this manner of terminating the tenancy constituted a breach by any party.

I find the Tenants sent their forwarding address to the Landlord via registered mail on March 23, 2022, which was delivered on March 25, 2022 and signed for by HH. I find the March 23, 2022 letter states the Landlord's address correctly, though no copy of the envelope was submitted into evidence. Based on the evidence presented, I find the Landlord was served with the Tenants' forwarding address in writing on March 25, 2022 in accordance with section 88(c) of the Act.

I find that under section 38(1) of the Act, the Landlord was required to repay the security deposit or make an application within 15 days after March 25, 2022, that is, on or before April 9, 2022. I find that April 9, 2022 was a Saturday and the Landlord had submitted her application on Monday, April 11, 2022. According to the definition of "days" in the Residential Tenancy Branch Rules of Procedure:

a) If the time for doing an act in relation to a Dispute Resolution proceeding falls or expires on a holiday the time is extended to the next day that is not a holiday.

b) If the time for doing an act in a government office (such as the Residential Tenancy Branch or Service BC) falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open."

Based on the above definition, I am inclined to find that the deadline for the Landlord to make an application under section 38(1)(d) of the Act was extended to Monday, April 11, 2022, such that the Landlord would have been on time.

However, I find that although the Landlord had submitted her application on April 11, 2022, that application was not effectively made due to lack of service. As a result, the Landlord's application could not be heard on its merits and was dismissed with leave to re-apply.

I find the Landlord would have been told by the previous arbitrator of this outcome during the hearing on June 6, 2022, as the arbitrator would have been unable to proceed with the Landlord's application. I find the Previous Decision emphasized that leave to re-apply did not mean any statutory deadlines were being extended.

In any event, I find the Landlord did not take any immediate action following June 6, 2022 such as re-submitting her application or repaying the security deposit to the Tenants.

I note that I would have considered the Landlord to have discharged her duty to “repay” the security deposit under section 38(1)(c) of the Act by sending an e-transfer to the Tenants, even if the Tenants did not accept her e-transfer. I find the Landlord did not attempt to send the Tenants an e-transfer until July 25, 2022.

Based on the foregoing, I conclude the Landlord did not repay the security deposit to the Tenants and did not make a valid application (regardless of the merits of such an application) to retain the security deposit within 15 days after receiving the Tenants’ forwarding address.

I note that even if I were to accept the Landlord had not received the Tenants’ forwarding address in writing until she received the Direct Request Package on April 29, 2022, or even until the time the Landlord received the NDRP Package on May 31, 2022, I find the conclusion remains that the Landlord did not repay the security deposit to the Tenants or make a valid application for dispute resolution within 15 days after receiving the forwarding address in writing.

I find the Tenants did not agree in writing for the Landlord to keep any portion of the security deposit. I further find the Tenants have not extinguished their rights to the security deposit as no move-in or move-out inspections were necessary or offered in the circumstances.

I conclude the Tenants are entitled to double the return of the security deposit under section 38.1(2) of the Act.

Section 38.1(2) also requires that interest calculated in accordance with section 38(1)(c) of the Act and the regulations be paid to a tenant. According to Policy Guideline 17, interest is calculated on the original security amount, before any deductions are made, and is not doubled. I find the Tenants would also be entitled to interest on the security deposit from the date it was paid (March 6, 2022) to the date that the Landlord had attempted to return the security deposit (July 25, 2022). However, the interest rate on deposits calculated under the regulations for the 2022 year was 0%, so I do not order any interest on the Tenants’ security deposit.

2. Are the Tenants entitled to reimbursement of the filing fee?

The Tenants have been successful in this application. Pursuant to section 72(1) of the Act, I award the Tenants reimbursement of their filing fee.

The total Monetary Order granted to the Tenants is calculated as follows:

Item	Amount
Return of Double the Security Deposit (2 × \$1,987.00) Plus \$0.00 Interest	\$3,974.00
Filing Fee	\$100.00
Total Monetary Order for Tenants	\$4,074.00

Conclusion

The Tenants' claims for return of double the security deposit and reimbursement of the filing are successful. Pursuant to sections 38.1 and 72 of the Act, I grant the Tenants a Monetary Order in the amount of **\$4,074.00**. This Order may be served on the Landlord, 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 16, 2023

Residential Tenancy Branch