



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding VEYRON PROPERTIES GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenants on August 4, 2022, under the *Residential Tenancy Act* (the Act), seeking:

- The return of a portion of their security deposit; and
- Recovery of the filing fee.

An Amendment to the Application (Amendment) was filed on March 21, 2023, increasing the amount of the monetary claim from \$600.00 to \$1,700.00.

The hearing was convened by telephone conference call at 1:30 pm on May 1, 2023, and was attended by the Tenants and two agents for the Landlord (Agents). All testimony provided was affirmed. As the Agents acknowledged service of the Notice of Dispute Resolution Proceeding (NODRP), and amendment, and stated that there are no concerns regarding the service dates or methods, the hearing proceeded as scheduled. The parties were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The parties were advised that interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The parties were also advised that pursuant to the Rules of Procedure, personal recordings of the proceedings are prohibited, and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

Preliminary Matters

Although the Agents acknowledged receipt of the Tenants' documentary evidence, the Tenants denied receipt of the documentary evidence from the Agents. The Agents stated that there was a history of email communication between them, and the documentary evidence was emailed to the Tenants at their respective email addresses on April 21, 2023. These email addresses match the ones provided by the Tenants in the Application.

Although the Tenants initially denied receipt, the Tenant AS confirmed when questioned that it was in their junk mail folder as it had been screened out due to the size of the attachments. They then argued that it should not be admitted for consideration as it was sent late and by email. Although the Agents stated that they thought the tenancy agreement permitted email service, the tenancy agreement before me has no such information in it.

Although I agree that the Landlord's documentary evidence was not served in accordance with section 88 of the Act, I am satisfied by AS' testimony that it was received. Further to this, it is clear to me that the parties regularly corresponded throughout the tenancy by email, and the Tenants even acknowledged at the hearing that their own documentary evidence was sent to the Landlord via email in addition to by registered mail. As a result, I find that there was a reasonable expectation by the Agents that this documentary evidence would be received. I therefore order that it was sufficiently served for the purposes of the Act on April 24, 2023, pursuant to sections 71(2)(b) and (c) of the Act, if not earlier received.

Although AS argued that the documentary evidence needed to be sent to them on or before April 17, 2023, this is incorrect. April 17, 2023, is the evidence service deadline for the applicants, not the respondents. Applicants and respondents have different evidence service deadlines. As the respondent's evidence was sent before April 23,

2023, I find it was sent on time. I therefore accept the documentary evidence before me on behalf of the Landlord for consideration.

Issue(s) to be Decided

Are the Tenants entitled to the return of their security deposit, or double its amount?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The parties agreed to the following:

- The tenancy ended on June 30, 2022;
- The Tenants provided the Landlord with their forwarding address in writing on June 30, 2022;
- The Tenants paid an \$800.00 security deposit at the start of the tenancy;
- \$118.91 was sent by the Landlord via etransfer to the Tenants on July 12, 2022, as a partial return of the security deposit;
- The Landlord retained the remaining \$689.01 balance of the security deposit;
- Condition inspections and reports were completed at the start and the end of the tenancy; and
- That sections 38(4) and 38(5) of the Act do not apply.

Despite the above, the Tenants denied receipt of the condition inspection reports. Although the Tenants acknowledged that the \$118.91 was sent to them by the Landlord on July 12, 2022, and deposited directly into their bank account, they stated that they do not acknowledge receipt and have not touched those funds.

Analysis

Are the Tenants entitled to the return of their security deposit, or double its amount?

As there is no evidence that the Tenants extinguished their right to the return of their security deposit, and the parties agreed that sections 38(4) and 38(5) do not apply, I find that the Landlord had until July 15, 2022, to either return the full \$800.00 security deposit to the Tenants, or file an Application for Dispute Resolution with the Residential Tenancy Branch (Branch) seeking retention of all or a portion of the deposit. The Landlord did neither.

Pursuant to section 38(6) of the Act and example A in part C, subsection 5 of Residential Tenancy Policy Guideline (Policy Guideline) #17, I find that the Tenants are entitled to \$1,600.00 for the return of double the amount of their security deposit, less the \$118.91 already returned, plus \$10.29 in interest owed on the outstanding balance of \$1,481.09. Although the Tenants stated that they do not acknowledge receipt of the \$118.91, they acknowledged that it was deposited into their bank account. As a result, I find that it was sent and received.

Are the Tenants entitled to recovery of the filing fee?

As the Tenants were successful in their Application, I also grant them recovery of their \$100.00 filing fee pursuant to section 72(1) of the Act.

Based on the above, I grant the Tenants a monetary order in the amount of \$1,591.38, and I order the Landlord to pay this amount to the Tenants.

Conclusion

I grant the Tenants' Application.

Pursuant to section 67 of the Act, I grant the Tenants a monetary order in the amount of **\$1,591.38**. The Tenants are provided with this 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, it may be 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 Branch under Section 9.1(1) of the Act.

Dated: May 10, 2023

Residential Tenancy Branch