



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing dealt with the Tenants' application under the Residential Tenancy Act (the "Act") for:

- return of the security deposit and/or pet damage deposit in the amount of \$1,001.76 pursuant to section 38; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The Landlord and the Tenants 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 were informed that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Removal of Applicant and Correction of Landlord's Name

This application initially named a third tenant and applicant, who is the Tenants' family member. However, I find that only the Tenants signed the tenancy agreement with the Landlord. As such, I find the third applicant was a permitted occupant of the rental unit rather than a tenant who had entered into a tenancy agreement with the Landlord. Accordingly, I have removed that person as a party to this application pursuant to section 64(3)(c) of the Act.

The Landlord confirmed his correct legal name during the hearing. I have also amended the Landlord's name on this application pursuant to section 64(3)(c) of the Act.

Preliminary Matter – Service of Dispute Resolution Documents

The Landlord acknowledged receipt of the Tenants' notice of dispute resolution proceeding package and documentary evidence (collectively, the "NDRP Package"), though he indicated that he received it from his office. The Tenants provided two registered mail tracking numbers which indicated that the packages were sent on March 24, 2023 and delivered on March 27, 2023. Based on the foregoing, I find the Landlord was sufficiently served with the NDRP Package by March 27, 2023.

The Landlord submitted documentary evidence to the Residential Tenancy Branch but did not serve a copy on the Tenants prior to this hearing. The Landlord explained that his evidence includes text message correspondence with the Tenants and photos of damage. Under Rule 3.15 of the Rules of Procedure, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. I find the Landlord did not serve the Tenants with a copy of his evidence as required by the Rules of Procedure. In addition, I find the Landlord's evidence relates to the Landlord's own claims against the Tenants, and not to the issues raised in this application. Therefore, I do not consider the Landlord's documentary evidence for the purpose of this application.

Preliminary Matter – Landlord's Claims

The Landlord claims that the Tenants owes unpaid utilities and left behind damage in the rental unit. However, the Landlord has not made a cross-application regarding his claims. Therefore, I am unable to address the Landlord's claims in this decision. The Landlord is at liberty to make his own application for dispute resolution within the applicable limitation period.

Issues to be Decided

1. Are the Tenants entitled to the return of their security deposit?
2. Are the Tenants entitled to reimbursement of their 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.

This tenancy commenced on February 1, 2020 and ended on January 31, 2023. Rent was \$2,060.00 at the time that the tenancy ended. The Tenants paid a security deposit of \$1,000.00 which is held by the Landlord.

The parties did not complete any formal move-in or move-out inspections and did not sign any condition inspection reports. The Tenants stated that they had viewed the property but it was not empty. At the end of the tenancy, there was no formal walkthrough before the Tenants gave the keys back to the Landlord.

The Tenants sent their forwarding address to the Landlord via email on February 3, 2023. A copy of this email is submitted into evidence. The Landlord acknowledged that he emailed a reply the same day in response to the Tenants' forwarding address email.

The Tenants stated that the Landlord blocked them after they asked for their security deposit back. The Tenants testified that they also sent their forwarding address to the rental unit and dropped off a copy with the Landlord's employee at the Landlord's retail store. The Tenants stated that they were unable to verify the Landlord's address stated on the tenancy agreement so they sent their forwarding letter to those two places to make sure that the Landlord would receive it. The Tenants submitted a copy of a forwarding address letter dated February 7, 2023 and photos of the Landlord's retail store into evidence.

The Tenants explained that the \$1.67 included in their claim on this application is for interest on the security deposit. During the hearing, the Tenants confirmed that they do not agree to waive the doubling provisions of the Act.

In response, the Landlord stated that the Tenants never paid utilities and damaged the rental unit. The Landlord suggested that the Tenants allowed others to smoke on the property and created a bad environment.

The Tenants denied the allegations made by the Landlord.

Analysis

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

Pursuant to sections 24 and 36 of the Act, landlords and tenants can extinguish their rights in relation to security and pet damage deposits if they do not comply with the Act and the regulations. Section 38 of the Act sets out specific requirements for dealing with security and pet damage deposits at the end of a tenancy.

Based on the evidence presented, I find the parties did not complete any move-in or move-out inspections together. I find the Tenants were not offered two opportunities for inspections in accordance with the Act and the regulations, which they then failed to participate in. Therefore, I find the Tenants did not extinguish their rights to the return of their security deposit under sections 24(1) or 36(1) of the Act. In addition, the Tenants submitted this application on March 22, 2023. I find the Tenants' application was made within one year of the tenancy end date. As such, I find the Tenants' rights to the deposit were not extinguished under section 39 of the Act.

In contrast, I find the Landlord's right to claim against the security deposit for damage to the rental unit was extinguished under section 24(2) of the Act. I find the Landlord did not offer the Tenants two opportunities for a move-in inspection in accordance with the Act and the regulations, which requires using a Notice of Final Opportunity to Schedule a Condition Inspection (form RTB-22) to propose a second opportunity. I find the Landlord did not complete a move-in condition inspection report with the Tenants and did not provide the Tenants with a copy of such a report in accordance with the regulations. Extinguishment for the Landlord means that the Landlord could not make an application to claim *against* the security deposit for damage to the rental unit, but could make other claims against the security deposit within the required time limit, or, after returning the deposit, still make an application to seek compensation for damage to the rental unit.

Under section 38 of the Act, a landlord must (a) repay a security deposit to the tenant with interest or (b) make an application for dispute resolution claiming against the deposit, within 15 days after the later of:

- the tenancy end date, or
 - the date the landlord receives the tenant's forwarding address in writing,
- unless the landlord has the tenant's written consent to keep the deposit or a previous order from the Residential Tenancy Branch.

In this case, I find the tenancy ended on January 31, 2023.

I find the Tenants emailed their forwarding address to the Landlord on February 3, 2023, and the Landlord acknowledged receipt of this email on the same day. Therefore, I find the Landlord was sufficiently served with the Tenants' forwarding address in writing by February 3, 2023, pursuant to section 71(2)(b) of the Act.

I find that under section 38(1) of the Act, the Landlord had 15 days from February 3, 2023, or until February 18, 2023, to repay the security deposit to the Tenants with interest or make an application to claim against the security deposit for a claim other than damage to the rental unit. I find the Tenants did not agree for the Landlord to keep the security deposit. I find there is no evidence of any previous orders made by the Residential Tenancy Branch regarding any compensation owed to the Landlord by the Tenants or authorization for the Landlord to keep the security deposit. I find the Landlord did not return the security deposit in full to the Tenants or make an application by February 18, 2023 as required under section 38(1) of the Act.

Section 38(6) of the Act states that if a landlord does not comply with section 38(1), the landlord may not make a claim against the security or pet damage deposit and must pay the tenant double the amount of the deposit.

Residential Tenancy Policy Guideline 17. Security Deposit and Set off ("Policy Guideline 17") states that unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit. In this case, the Tenants confirmed during the hearing that they would not waive the doubling of the deposit.

Based on the foregoing, I conclude that the Tenants are entitled to a return of double the security deposit with interest under section 38 of the Act.

The interest rate on deposits was 0% from 2020 to 2022, and is 1.95% in 2023. According to Policy Guideline 17, interest is calculated on the original security deposit amount, before any deductions are made, and is not doubled. Using the Residential Tenancy Branch Deposit Interest Calculator online tool, I find the Tenants are entitled to \$7.44 of interest on the security deposit from when it was paid to the date of this decision, calculated as follows:

2020 \$1000.00: \$0.00 interest owing (0% rate for 91.54% of year)
2021 \$1000.00: \$0.00 interest owing (0% rate for 100.00% of year)
2022 \$1000.00: \$0.00 interest owing (0% rate for 100.00% of year)
2023 \$1000.00: \$7.44 interest owing (1.95% rate for 38.08% of year)

Pursuant to section 38 of the Act, I order the Landlord to pay the Tenants \$2,007.44 (or $\$1,000.00 \times 2 + \7.44) for the return of double the security deposit plus interest.

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

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

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

Item	Amount
Return of Double the Security Deposit (\$1,000.00 × 2)	\$2,000.00
Interest on Security Deposit	\$7.44
Filing Fee	\$100.00
Total Monetary Order for Tenants	\$2,107.44

Conclusion

The Tenants' claims for return of the security deposit and reimbursement of the filing fee are successful.

Pursuant to sections 38 and 72 of the Act, I grant the Tenants a Monetary Order in the amount of **\$2,107.44**. 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: May 19, 2023

Residential Tenancy Branch