



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened as a result of the tenants' application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "Act"). The tenants applied for the return of their security deposit.

The tenants appeared at the teleconference hearing and gave affirmed testimony. During the hearing the tenants presented their evidence. A summary of their testimony is provided below and includes only that which is relevant to the hearing.

As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice") was considered. The tenants provided affirmed testimony that the Notice was served on the landlord by personal service on April 2, 2013 at the landlord's place of business, which was witnessed by AR. Witness AR testified under oath that she saw the tenants personally serve the landlord on April 2, 2013 at the landlord's place of business. Based on the undisputed testimony of the tenants and their witness, I accept that the landlord was sufficiently served with Notice of a Dispute Resolution Hearing.

Preliminary Matter

During the hearing, the tenants requested to waive their right to double their security deposit under the *Act* and confirmed that they were only seeking the return of their original security deposit in the amount of \$500.00.

Issue to be Decided

- What should happen to the tenants' security deposit under the *Act*?

Background and Evidence

A month to month tenancy agreement began on November 1, 2012. Monthly rent in the amount of \$900.00 was due on the first day of each month. A security deposit of \$500.00 was paid by the tenants at the start of the tenancy which is \$50.00 more than the *Act* permits, and which will be addressed later in this decision.

The tenancy ended on March 1, 2013 when the tenants vacated the rental unit. The tenants testified that they served a one month notice in writing via personal service to the landlord on January 30, 2013. The tenants stated that their one month notice had an effective vacancy date of March 1, 2013.

The tenants testified that they provided their written forwarding address to the landlord on March 5, 2013 to the landlord in person at the landlords' place of business. On March 21, 2013 the tenants stated that they spoke to the landlord who was very vague on their return of their security deposit which prompted the tenants to file their application on March 26, 2013 for the return of their security deposit. The tenants stated that they have regularly checked their mail and the landlord failed to return their security deposit. The tenants stated that they are waiving their right under section 38 of the *Act* to double their security deposit and are only seeking the return of their \$500.00 security deposit.

The tenants testified that there was no move-in or move-out condition inspection report completed during the tenancy.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Analysis

Based on the documentary evidence and the undisputed testimony provided during the hearing, and on the balance of probabilities, I find the following.

I will first deal with the amount of the security deposit accepted by the landlord. Section 19 of the *Act* states:

19 (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.

(2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.
[emphasis added]

Based on the above, **I find** the landlord breached section 19 of the *Act* as the maximum security deposit in this matter was ½ of \$900.00 monthly rent, which is \$450.00. As the landlord accepted a \$500.00 security deposit, **I caution** the landlord to comply with section 19 in the future.

Tenants' claim for the return of their security deposit – I accept that the tenancy ended on March 1, 2013. Section 38 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.

(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 added]

In the matter before me, **I find** that the landlord did not repay the security deposit or make an application for dispute resolution claiming against the security deposit. Given the above, **I find** the landlord breached section 38 of the *Act* by failing to return the security deposit in full to the tenants within 15 days of receiving the forwarding address

of the tenants in writing on March 5, 2013 having not made a claim towards the security deposit. However, the tenants have waived their right to double the security deposit under section 38 of the *Act*. Therefore, **I find** the tenants are entitled to the return of their original security deposit of **\$500.00**. I note that the security deposit accrued no interest since the start of the tenancy.

As the tenants were successful with their application, **I grant** the tenants the recovery of their filing fee in the amount of **\$50.00**.

Monetary Order – I find that the tenants have established a total monetary claim in the amount of **\$550.00**, comprised of \$500.00 for the return of the tenants' security deposit plus the \$50.00 filing fee. **I grant** the tenants a monetary order pursuant to section 67 of the *Act* in the amount of **\$550.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I find that the tenants have established a total monetary claim of \$550.00 and I grant the tenants a monetary order under section 67 in that amount. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: July 05, 2013

Residential Tenancy Branch