



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 604 Real Estate Services Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, FF, O

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all of their security deposit pursuant to section 38;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72; and
- other unspecified remedies.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The landlord confirmed that on June 18, 2013, the landlord's office received a copy of the tenants' dispute resolution hearing package sent by registered mail by the tenants. I am satisfied that the tenants served their hearing package and that the parties served one another with their written evidence packages in accordance with the *Act*.

Issues(s) to be Decided

Are the tenants entitled to a monetary award equivalent to the amount of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*? Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy began as a one-year fixed term tenancy on May 15, 2011. Before the expiration of the initial term, the tenants signed a new one-year fixed term tenancy agreement commencing on June 1, 2012. According to the terms of this second fixed term tenancy, the tenants were to vacate the rental unit by May 31, 2013. Monthly rent was set at \$1,200.00, payable in advance on the first of each month. The tenants paid a \$600.00 security deposit on April 26, 2011.

The tenants ended their tenancy on May 27, 2013, when they surrendered their keys to the rental unit and participated in a joint move-out condition inspection of the premises with one of the landlord's representatives. Although the male tenant maintained that he had a mutual agreement with the landlord to end this tenancy on May 27, 2013, before the scheduled May 31, 2013 end date identified in the residential tenancy agreement, he testified that he had no written confirmation of any such mutual agreement.

The tenants' application for a monetary award of \$2,007.81 identified the following items for compensation:

Item	Amount
Return of Security Deposit	\$600.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i> (\$600.00 + \$600.00 = \$1,200.00)	1,200.00
Pro-Rated Overpayment of Rent for last 4 days of May 2013	157.81
Recovery of Filing Fee for this Application	50.00
Total Monetary Order Requested	\$2,007.81

At the hearing, the male tenant (the tenant) confirmed that the tenants received a cheque for the return of the tenants' \$600.00 security deposit by mail on June 17, 2013. The tenant confirmed that the tenants have cashed the landlord's \$600.00 return of their security deposit. He revised the amount of the requested monetary award initially by \$600.00 and then by a further \$600.00, once he realized that section 38 of the *Act* only enables a tenant to request the return of double their security deposit if the landlord has not returned their security deposit. The tenants' application for a monetary award is reduced to \$807.81.

The landlord confirmed that the tenants handed one of the landlord's representatives their forwarding address in writing on May 27, 2013, at the time of the joint move-out condition inspection. He testified that the landlords contacted the tenants on June 13, 2013, to ask them to either pick up their security deposit return or have it mailed to them. When the tenants did not respond, the landlord mailed the security deposit cheque to the tenants that day.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order

allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address in writing. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, I find that the landlord has not returned the tenant's security deposit in full within 15 days of receipt of the tenant's forwarding address in writing and the end of this tenancy, which both occurred on May 27, 2013. Although the tenants remained responsible for the full payment of their monthly rent until May 31, 2013, the landlord's representative accepted the return of the tenants' keys and completed the joint move-out condition inspection on May 27, 2013. By obtaining vacant possession of the rental unit on May 27, 2013, the tenancy ended that day. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit. The landlord has not obtained the tenants' written authorization at the end of the tenancy to retain any portion of the tenant's security deposit.

The landlord did commence the process of trying to return the tenants' security deposit on June 13, 2013. However, by the landlord's own admission, the landlord did not attempt to deliver the security deposit to the tenants on that date, but placed a phone call to them telling them their security deposit was available for pickup that date or it would be sent through the mail to them. The tenant confirmed that the tenants did receive the return of their \$600.00 security deposit on June 17, 2013, four days after the landlord mailed it to them.

Even if I were to accept the landlord's assertion that this tenancy did not actually end until May 31, 2013, the last day of this fixed term tenancy, which I do not, there is still evidence that the security deposit was not received by the tenants until more than 15 days had passed. In accordance with section 38 of the *Act*, I find that the tenants are therefore entitled to a monetary order amounting to double their security deposit with interest calculated on the original amount only, less the amount of the returned security deposit. No interest is payable over this period.

I dismiss the tenant's claim for a monetary award for their overpayment of rent for May 2013, as I find that the tenants provided insufficient evidence to demonstrate that they had a signed mutual agreement to end this tenancy before the scheduled May 31, 2013

date identified in their tenancy agreement. I find that the tenants remain responsible for all of the May 2013 rent paid to the landlord and are not entitled to any rebate for the four days from May 27 until May 31, 2013.

As the tenants have been partially successful in their application, I find that they are entitled to recover their \$50.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenants' favour under the following terms which allows the tenants a monetary award for the landlord's failure to comply with section 38 of the *Act* and to recover their filing fee from the landlord:

Item	Amount
Return of Security Deposit	\$600.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	600.00
Less Security Deposit Returned to Tenants	-600.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$650.00

The tenants are provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: September 23, 2013

Residential Tenancy Branch

