



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

On August 18, 2019, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for a return of double the security deposit and pet damage deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “Act”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

Both the Tenants attended the hearing and J.J. attended the hearing as well, as an agent for the Landlord. All in attendance provided a solemn affirmation.

J.J. verbally spelled the name of the Landlord, which was different from the name listed as the Landlord, by the Tenants, on the Application. The Tenants advised that the documentation they had noted the correct spelling of the Landlord’s name. As such, they elected not to amend the Landlord’s name as they spelled it on the Application.

The Tenants advised that the Notice of Hearing and package was served to the Landlord by registered mail on August 28, 2019 and J.J. confirmed receipt of this package. In accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing package.

The Tenants advised that they served their evidence to the Landlord by registered mail on November 26, 2019 and J.J. confirmed receipt of this package. As this evidence was served in compliance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this decision.

J.J. advised that the Landlord did not submit any evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a return of double the security deposit and pet damage deposit?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenants advised that the tenancy started on or around February 11, 2013 and the tenancy ended on or around July 29, 2019 when the Tenants gave up vacant possession of the rental unit. Rent was established at \$1,224.00 per month, due on the first day of each month. A security deposit of \$500.00 and a pet damage deposit of \$500.00 were also paid.

J.J. advised that he could not corroborate this information but assumed that it was correct. He stated that he took over as property manager on August 1, 2019 and that a previous property manager had managed the rental unit prior to this date. He advised that the Landlord only provided him with limited documentation.

The Tenants advised that they provided their forwarding address in writing to the previous property manager, by hand, on June 29, 2019 as part of their Notice to end their tenancy. This letter was submitted as documentary evidence. They stated that they did not hear from this property manager at all and vacated the rental unit on July 29, 2019. They stated that they emailed the property manager on July 31, 2019 but they did not receive a response from him.

J.J. reiterated that he started as the new property manager on August 1, 2019 and that the Landlord did not provide him with much documentation or information. However, he

did confirm that the Landlord has neither returned the deposits in full nor made an Application through the Residential Tenancy Branch to keep the deposits.

The Tenants are seeking compensation in the amount of **\$2,000.00** because the Landlord did not comply with Section 38 of the *Act* with respect to the security and pet damage deposit.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposits. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposits, and the Landlord must pay double the deposits to the Tenants, pursuant to Section 38(6) of the *Act*.

When reviewing the evidence before me, I have a copy of the letter that the Tenants advised they served to the previous property manager, and their affirmed testimony that this was provided on June 29, 2019. When assessing the weight of this evidence, I find it important to note that the Landlord has submitted no evidence with respect to this issue. Furthermore, while J.J. questioned whether or not the previous property manager was actually provided with the Tenants' forwarding address in writing, his only basis for making this submission is that he took over managing the rental unit after the tenancy ended and that his knowledge of the details of this tenancy are limited because the documents and the information that the Landlord provided him with were inadequate.

I find it important to note that he acknowledged that the Landlord received the Notice of Hearing and evidence package on or around the first week of September 2019. Given that the Tenants' Application outlined their claim and the evidentiary documents they were relying on were included in this package, as there was no submission from the Landlord with respect to the issue of not being provided with a forwarding address in writing, I give no weight to J.J.'s speculation that this letter may not have been provided. Moreover, I do not accept his explanation that the Landlord did not provide him with

adequate documents or information to be a reason for not preferring the Tenants' evidence. Furthermore, he acknowledged that he took over managing the rental unit on August 1, 2019 and that he entered the rental unit to clean and conduct repairs. There was no issue raised about the Landlord not being aware that the Tenants had given up vacant possession of the rental unit at the end of July 2019. As such, I find that this further supports the notion that the Tenants' notice to end their tenancy and forwarding address in writing was more likely than not received by the Landlord.

Based on the totality of the evidence before me, I am satisfied that a forwarding address in writing was provided by the Tenants on June 29, 2019 to the previous property manager. I find it important to note that Section 38 of the *Act* clearly outlines that once a forwarding address in writing is provided or when the tenancy ends, the Landlord must either return the deposits in full **or** make an application to claim against the deposits. There is no provision in the *Act* which allows the Landlord to retain the deposits without the Tenants' written consent.

As the undisputed evidence is that the Tenants did not provide written authorization for the Landlord to keep any amount of the deposits and that the Landlord did not return the deposits in full or make an Application to keep the deposits within 15 days of July 31, 2019, I find that the Landlord illegally withheld the deposits contrary to the *Act*, and did not comply with the requirements of Section 38.

Consequently, I am satisfied that the Tenants have substantiated a monetary award amounting to double the original security deposit and pet damage deposit. Under these provisions, I grant the Tenants a monetary award in the amount of **\$2,000.00**.

As the Tenants were successful in their claims, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenants

Doubling of the security deposit	\$1,000.00
Doubling of the pet damage deposit	\$1,000.00
Recovery of filing fee	\$100.00
TOTAL MONETARY AWARD	\$2,100.00

Conclusion

The Tenants are provided with a Monetary Order in the amount of **\$2,100.00** 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, this Order 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 Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 17, 2019

Residential Tenancy Branch