



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSDB-DR, FFT**
 MNDL-S, MNDCL-S, FFL

Introduction

This hearing dealt with applications from both the landlord and tenants pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord applied for:

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the security deposit for this tenancy pursuant to section 38; and
- Authorization to recover their filing fee from the tenants pursuant to section 72.

The tenants applied for:

- A return of all or a portion of their deposit pursuant to section 38; and
- Authorization to recover their filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord confirmed receipt of the tenants’ application and materials. Based on the testimonies I find that the landlord was duly served with the materials in accordance with sections 88 and 89 of the Act.

Preliminary Issue – Service of Landlord's Application

The landlord testified that they had not served the tenants with their application or evidence and had merely uploaded them to file with the Branch. The tenants confirmed that they had not been served with any of the landlord's materials.

Section 89(1) of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution for a monetary award:

89(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 71(1) [director's orders: delivery and service of document]...*

As the tenants have not been served with the landlord's application for dispute resolution in accordance with the *Act* or at all, I dismiss the landlord's application with leave to reapply.

Issue(s) to be Decided

Are the tenants entitled to recover their security and pet damage deposit?

Are the tenants entitled to recover their filing fee from the landlord?

Background and Evidence

The parties agreed on the following facts. This periodic tenancy began in November 2011 and ended on April 30, 2020. A security deposit of \$725.00 and pet damage deposit of \$725.00 were paid at the start of the tenancy and are still held by the landlord. The tenants provided a forwarding address in writing on May 7, 2020. No move-out condition inspection report was prepared for this tenancy. The tenants did not provide written authorization that the landlord may retain any portion of the deposits.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit.

In the case at hand the undisputed evidence before me is that the tenants provided a forwarding address by email on May 7, 2020 in accordance with the Director's Order dated March 30, 2020. While the landlord said they did not read the email until later that month when they were served with the tenants' application, I find that the failure to read correspondence does not extend the service deadlines. I find that the landlord was sufficiently served with the tenants' forwarding address on May 7, 2020, pursuant to section 71 of the *Act*.

The landlord filed an application for dispute resolution on June 12, 2020, outside of the 15 day period from May 7, 2020 prescribed under the *Act*. I accept the tenants' evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*.

Furthermore, I accept the evidence of the parties that no move-out condition inspection report was prepared nor were the tenants given 2 opportunities to participate in an inspection as required under section 35 of the *Act*. As such, pursuant to section 36(2) of the *Act*, I find that the landlord has extinguished their right to claim against the deposits for this tenancy.

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the tenant's security and pet damage deposit in full within the required 15 days. I accept the tenants' evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenants are entitled to an \$2,900.00 Monetary Order, double the value of the security and pet damage deposit paid for this tenancy. No interest is payable over this period.

As the tenants were successful in their application, they are entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlord's application is dismissed with leave to reapply.

I issue a Monetary Order in the tenant's favour in the amount of \$3,000.00 against the landlord allowing them to recover double the security and pet damage deposit as well as their filing fee. The tenants are provided with a Monetary 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, 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: July 6, 2020

Residential Tenancy Branch