



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants July 06, 2022 (the “Application”). The Tenants applied as follows:

- For return of the security deposit
- For reimbursement for the filing fee

The Tenants appeared at the hearing. Nobody appeared at the hearing for the Landlord. I explained the hearing process to the Tenants. I told the Tenants they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Tenants provided affirmed testimony.

The Tenants submitted evidence prior to the hearing. The Landlord did not submit evidence. I addressed service of the hearing package and Tenants’ evidence.

The Tenants testified that the hearing package and their evidence were sent to the Landlord by registered mail August 22, 2022. The Tenants testified that the package was sent to the rental unit address because the Landlord lives in the main part of the house at the address. The Tenants confirmed Tracking Number 304 relates to this. The Tenants submitted documentary evidence of service with Tracking Number 304 on it. The Canada Post website shows the package was delivered and signed for August 27, 2022.

Based on the undisputed testimony of the Tenants, documentary evidence of service and Canada Post website information, I am satisfied the hearing package and Tenants’

evidence were served on the Landlord in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the “Act”). Based on the Canada Post website information, I am satisfied the Landlord received the package August 27, 2022. I am also satisfied based on the evidence that the Tenants complied with rule 3.1 of the Rules in relation to the timing of service.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Landlord. The Tenants were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I have only referred to the evidence I find relevant in this decision.

During the hearing, the Tenants confirmed they are seeking return of double the security deposit.

Issues to be Decided

1. Are the Tenants entitled to return of double the security deposit?
2. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

The Tenants provided the following testimony and evidence.

The written tenancy agreement in evidence is accurate. The tenancy started April 11, 2021. The Tenants paid an \$800.00 security deposit.

The tenancy ended June 15, 2022.

The Landlord returned \$400.00 of the security deposit June 30, 2022.

The Tenants provided their forwarding address to the Landlord in writing May 15, 2022. The Tenants submitted a letter dated May 15, 2022, with their forwarding address in it. The Tenants put the letter in an envelope and stuck it in the door frame of the Landlord's residence.

The Landlord did not have an outstanding Monetary Order against the Tenants at the end of the tenancy.

The Tenants did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit.

The Landlord did not apply to the RTB to keep the security deposit.

The parties did not do move-in or move-out inspections. The Tenants were not offered two opportunities, one on the RTB form, to do a move-in inspection. The parties agreed to do a move-out inspection June 14th; however, the Landlord did not attend.

Analysis

Section 38 of the *Act* sets out the obligations of a landlord in relation to a security deposit held at the end of a tenancy.

Section 38(1) requires a landlord to return the security deposit in full or file a claim with the RTB against it within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing. There are exceptions to this outlined in sections 38(2) to 38(4) of the *Act*.

I accept the undisputed testimony of the Tenants and based on it, as well as the documentary evidence submitted, I find the following.

The tenancy ended June 15, 2022.

The Tenants' forwarding address was provided to the Landlord in writing May 15, 2022. The forwarding address was served on the Landlord in accordance with section 88(g) of the *Act*. The Landlord is deemed to have received the forwarding address May 18, 2022, pursuant to section 90(c) of the *Act*.

June 15, 2022, is the relevant date for the purposes of section 38(1) of the *Act*. The Landlord had 15 days from June 15, 2022, to repay the security deposit in full or file a claim with the RTB against the security deposit.

The Landlord only returned half of the security deposit within 15 days of June 15, 2022, and failed to return the full security deposit by this date.

The Landlord did not file a claim with the RTB against the security deposit.

I find the Landlord failed to comply with section 38(1) of the *Act*.

Sections 38(2) to 38(4) of the *Act* state:

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) 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...

Based on the undisputed testimony of the Tenants, I find none of the exceptions outlined in sections 38(2) to (4) of the *Act* apply.

Section 38(6) of the *Act* states:

(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.

RTB Policy Guideline 17 addresses security deposits and what happens when a landlord returns some of the security deposit but does not return the full deposit and

does not file a claim with the RTB against the security deposit. At page three the guideline states:

5. The following examples illustrate the different ways in which a **security deposit may be doubled** when an amount has previously been deducted from the deposit:

- Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, **the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch**. The tenant applied for a monetary order and a hearing was held.

The arbitrator **doubles the amount paid as a security deposit (\$400 x 2 = \$800)**, then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is \$525.00 ($\$800 - \$275 = \525).

The above example applies here. The Tenants paid an \$800.00 security deposit, and this amount is doubled to equal \$1,600.00. The Landlord returned \$400.00 of the security deposit within the deadline and therefore this amount is deducted from the amount owing which leaves \$1,200.00 owing. There is no interest owed on the security deposit because the amount of interest owed has been 0% since 2009.

Given the Tenants have been successful in the Application, I award the Tenants reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenants are entitled to \$1,300.00 and I issue the Tenants a Monetary Order in this amount.

Conclusion

The Tenants are issued a Monetary Order for \$1,300.00. This Order must be served on the Landlord as soon as possible. If the Landlord fails to comply with the Order, the 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 *Act*.

Dated: January 03, 2023

Residential Tenancy Branch