



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNSDS-DR, FFT**

Introduction

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

1. An Order for the return of the security deposit that the Landlord is holding without cause pursuant to Section 38 of Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Tenants attended the hearing at the appointed date and time and provided affirmed testimony. The Landlords did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenants and I were the only ones who had called into this teleconference. The Tenants were given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Tenants that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Tenants testified that they were not recording this dispute resolution hearing.

The Tenants testified that they served the Landlords with the Notice of Dispute Resolution Proceeding package and evidence for this hearing on August 11, 2022 by Canada Post registered mail (the "NoDRP package"). The Tenants referred me to the Canada Post registered mail tracking number as evidence of proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the

Landlords were deemed served with the NoDRP package five days after mailing them, on August 16, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

Issues to be Decided

1. Are the Tenants entitled to an Order for the return of the security deposit that the Landlord is holding without cause?
2. Are the Tenants entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Tenants confirmed that this oral periodic tenancy began on February 15, 2022. Monthly rent was \$1,250.00 payable on the fifteenth day of each month. A security deposit of \$625.00 was collected at the start of the tenancy and is still held by the Landlord. The tenancy ended on April 15, 2022.

The Tenants' forwarding address was sent to the Landlords by registered mail May 17, 2022. The tracking number for this package is noted on the cover sheet of this decision. Delivery of this package is confirmed by Canada Post.

The Landlords 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 Landlords could keep some or all of the security deposit.

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

The Landlords still hold the security deposit.

The Tenant did move-in and move-out condition inspections with the Landlords. The Landlords did not provide the Tenants with copies of signed condition inspection reports for move-in or move-out.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

This hearing was conducted pursuant to RTB Rules of Procedure 7.3, in the Landlords' absence, therefore, all the Tenants' testimony is undisputed. Rules of Procedure 7.3 states:

Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

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 this, as well as the documentary evidence submitted, I find the following:

- The tenancy ended April 15, 2022.
- The Tenants' forwarding address was provided to the Landlords in writing on May 17, 2022, and the Landlords are deemed in receipt of the forwarding address on May 22, 2022.

June 06, 2022 is the relevant date for the purposes of Section 38(1) of the Act. The Landlords had 15 days from May 22, 2022 to repay the security deposit in full or file a claim with the RTB against the security deposit.

The Landlords did not repay the security deposit or file a claim with the RTB against the security deposit within 15 days of May 22, 2022. Therefore, the Landlords failed to comply with Section 38(1) of the Act.

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

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- (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...*

The Tenants participated in move-in and move-out condition inspections with the Landlords and therefore did not extinguish their rights in relation to the security deposit. Section 38(2) of the Act does not apply.

The Landlords did not have an outstanding monetary order against the Tenants at the end of the tenancy. Section 38(3) of the Act does not apply.

The Tenants did not agree in writing at the end of the tenancy that the Landlords could keep some or all of the security deposit. Section 38(4) of the Act does not apply.

Given the above, I find the Landlords failed to comply with Section 38(1) of the Act in relation to the security deposit and that none of the exceptions outlined in Sections 38(2) to 38(4) of the Act apply. Therefore, the Landlords are not permitted to claim against the security deposit and must return double the security deposit to the Tenants pursuant to Section 38(6) of the Act.

The Landlords must return \$1,250.00 to the Tenants. There is \$3.58 of interest owed on the security deposit.

As the Tenants were successful in their 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 \$1,353.58 (\$1,250.00+\$3.58+\$100.00) and I issue the Tenants a Monetary Order for this amount.

Conclusion

The Tenants are issued a Monetary Order for \$1,353.58. This Order must be served on the Landlords as soon as possible. If the Landlords fail 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: April 17, 2023

Residential Tenancy Branch