



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants for a Monetary Order for money owed or compensation for loss or damage under the *Act*, regulation or tenancy agreement, an Order for the landlord to return the security deposit and a Monetary Order to recover the filing fee.

The tenant served the landlord with a copy of the Application and Notice of Hearing. The landlord confirmed he had received this. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave their testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Was the landlord able to retain all or part of the tenant's security deposit?
- If not are the tenants entitled to double their security deposit?
- Did the landlord complete a move in and move out condition inspection report?
- Are the tenants entitled to recover their filing fee?

Background and Evidence

This tenancy started on July 01, 2008. This was a fixed term tenancy which ended on February 28, 2009. Rent was \$1,300.00 per month payable on the 1st of each month. The tenants paid a security deposit of \$1,000.00 on June 28, 2008. The tenancy agreement states that the tenants were responsible for 50% of the utility bills. The tenants gave the landlord their forwarding address in writing on or around March 10, 2009. The tenants state that the landlord only returned \$207.49 from their security deposit and made deductions for damages, cleaning and unpaid utility bills of \$792.51. The tenants dispute these charges and did not give the landlord permission to retain any portion of their security deposit. The tenants have provided in evidence photographs of each room of the rental unit at the end of their tenancy in prove of the clean and tidy state it was left in when they moved out.

The landlord states that the tenants owed utility charges for January of \$261.49 and February of \$331.02. The landlord claims that he had cleaning costs of \$100.00 and repairs to the rental unit of \$100.00. The landlord was submitted as evidence photographs he took of the rental unit which show some damage to the wall, cleaning of the bath tub and window sills. The landlord did not know that he could not deduct these amounts and so sent the remainder of the deposit back to the tenants within 15 days of receiving their forwarding address in writing. The Landlord confirms that he did not carry out a move in or move out condition inspection report.

Analysis

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants address in writing to either return the security deposit to the tenant or to make a claim against it by applying

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for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6) of the *Act*, the landlord must pay double the amount of the security deposit (plus any interest accrued on the original amount) to the tenant.

I find that the landlord did receive the tenants forwarding address in writing by March 10, 2009. As a result, the landlord had until March 25, 2009 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return all of the tenant's security deposit consequently, pursuant to section 38(6) of the *Act*, the landlord must pay the tenants double the amount remaining of the security deposit.

The landlord did not complete a move in or move out condition inspection report pursuant to section 23 and 35 of the *Act*. Therefore, the landlords' right to retain any portion of the tenant's security deposit is extinguished.

The landlord did return \$207.49 from the tenant's security deposit within 15 days of receiving their forwarding address in writing. Therefore this amount will be deducted from the total amount that must be returned. The tenant is in agreement that the landlord may retain \$592.51 for their share of the utility bills in compliance with the *Residential Tenancy Act* section 38 (4)(a).

Section 67 of the *Residential Tenancy Act* states: Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.



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As the tenants have been successful in their application they are also entitled to recover their filing fee of \$50.00. The tenants are entitled to a Monetary Order as follows:

Original security deposit	\$1,000.00
Less amount paid to tenants	(-\$207.49)
Subtotal	\$800.05
Double the original amount less amount paid	\$792.51
Subtotal	\$1592.56
Less utility bills	(-\$592.51)
Filing fee	\$50.00
Total amount to pay to tenants	\$1050.05

Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$1,050.05**. The order must be served on the landlord and is enforceable through the Provincial Court 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: June 22, 2009.

Dispute Resolution Officer