



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNSD

Introduction

This hearing dealt with an application from the tenants for double the return of the security deposit. The tenants participated in the hearing and gave affirmed testimony. Despite service of the application for dispute resolution and notice of hearing in person to the landlord's spouse on April 8, 2009, the landlord did not appear.

Issue to be decided

- Whether the tenants are entitled to double the return of the security deposit

Background and Evidence

Pursuant to a written residential tenancy agreement, the fixed term of tenancy was from September 1, 2008 to August 31, 2009. Rent in the amount of \$1,100.00 was due on the first day of the month, and a security deposit of \$550.00 was collected at the start of tenancy.

By way of verbal agreement reached between the parties in early January 2009, the tenancy was to end effective February 28, 2009. This agreement was formalized by way of letter from the tenants to the landlord dated January 31, 2009; in the letter the tenants provided the landlord with one month's notice of their intent to vacate the unit effective at the end of February 2009, and also informed the landlord of their forwarding address. The tenants testified that the landlord re-rented the unit at the start of March 2009.

Subsequent to the end of tenancy, the parties were in contact about the return of the security deposit. However, this contact did not lead to agreement around how much of

the security deposit the landlord should be entitled to retain. In the absence of any final agreement between the parties, after the tenants applied for dispute resolution, the landlord mailed a cheque to them for \$200.00 from their original security deposit of \$550.00, plus a calculation of some interest. In summary, enclosed with the cheque the landlord itemized various deductions in the total amount of \$350.00. The tenants dispute the landlord's claim for these costs. Additionally, the tenants note that there was neither a move-in condition inspection and report at the start of tenancy, nor a move-out condition inspection and report completed and signed by both parties at the end of tenancy. The tenants are prepared to authorize the landlord to withhold \$75.00 from the security deposit for minor repairs but, otherwise, they seek the double return of their security deposit. In the meantime, the tenants have undertaken not to cash the landlord's cheque.

Analysis

Section 38 of the Act speaks to **Return of security deposit and pet damage deposit**. In particular, section 38(1) of the Act states:

38(1) Except as provided in subsection (3) or (4)(a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one or more of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Further, section 38(6) of the Act states:

38(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.

Based on the documentary evidence and undisputed testimony of the tenants, I find that the landlord failed to comply with the provisions set out in section 38(1) of the Act, as above. Specifically, the landlord did not repay the security deposit within 15 days after the tenancy ended or receipt of the tenants' forwarding address in writing, and neither did the landlord apply for dispute resolution. Accordingly, I find that the tenants have established entitlement to \$1,102.75. This amount is comprised of double the return of the security deposit totalling \$1,100.00 (2 x \$550.00) in addition to interest calculated on the original amount of the security deposit of \$2.75. From the amount of this entitlement, I deduct \$75.00 in favour of the landlord as authorized by the tenants, and I grant the tenants a monetary order for the balance of \$1,027.75 (\$1,102.75 - \$75.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the tenants in the amount of **\$1,027.75**. Should it be necessary, this order may be served on the landlord, filed in the Small Claims Court and enforced as an order of that Court.

DATE: July 6, 2009

Dispute Resolution Officer