



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD

Introduction

This matter dealt with an application by the tenants for the return of their security deposit.

Service of the hearing documents was done in accordance with section 89 of the *Act*. They were sent to the landlord by registered mail on June 29, 2009. The landlord confirmed she had received them.

Both parties appeared, gave their testimony, were provided the opportunity to present their, evidence cross-examine the other party and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached;

Issues(s) to be Decided

- Did the landlord conduct a move out condition inspection?
- Are the tenants entitled to the return of their security deposit?
- Are the tenants entitled to double the original amount of their security deposit?

Background and Evidence

This tenancy started on July 02, 2008. This was a fixed term tenancy ending on June 30, 2009. A move in condition inspection was conducted at the beginning of the tenancy. In January, 2009 the tenants sought and gained permission from the landlord to reassign the lease to new tenants. The tenants were added to the tenancy agreement for February, 2009. The outbound tenants moved out on January 31, 2009.

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The tenants claim that the landlord did not conduct a move out condition inspection with them at the end of their tenancy. They gave the landlord their forwarding address along with a request for the return of their security deposit on February 11, 2009. This was taken to the landlords' place of business and handed to an adult in charge at that time.

The landlord agrees that the tenants requested to re-assign their lease. The landlord has included the new tenants on the existing tenancy agreement. The landlord testifies that the tenants would give their keys to the new tenants and the new tenants would give the tenants their security deposit. However, on moving in the new tenants found that the outbound tenants had left the unit in a poor condition. They state that there was food residue on the stove, fridge and kitchen floor. The bathroom walls and windows had not been cleaned. The carpets had not been cleaned and there was damage to a wall and door. They state that the outbound tenants had not followed the cleaning list provided by the landlord so they refused to give them the \$525.00 security deposit. The new tenants state that they spoke to one of the outbound tenants and she apologized for the unit not being cleaned and understood that she would not get her security deposit back.

The tenants dispute this. They testify that they did clean the unit and carpets and did not agree to the new tenants retaining their security deposit. They argue that if the landlord had completed a move out condition inspection this would have highlighted the condition of the unit at the end of their tenancy.

Analysis

Section 36 of the *Act* states that:

- (2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit,

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or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 35 (2) [*2 opportunities for inspection*],

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I find that the landlord did not comply with section 35 of the Act with regard to the move out condition inspection. It is the landlord's responsibility to complete this inspection with tenants on the day they move from a rental unit whether or not the lease is re-assigned unless the tenants become landlords to the new tenants. In this instance the landlord has remained the landlord for the new tenants and can not contract out of his responsibility to the old tenants. The new tenants are therefore not responsible to give the old tenants the security deposit back. The landlord has two options on receiving the tenants forwarding address in writing. Option One is to return the tenants security deposit within 15 days. Option two is to apply for dispute resolution to keep all or part of the security deposit. I find that the landlord did not do either of these and I find the tenants are entitled to recover their security deposit plus any accrued interest. The tenants are also entitled to recover double the amount of the original deposit pursuant to section 38 (6)(b) of the *Act*.

The tenants are entitled to a Monetary Order for the following amount:



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Security deposit	\$525.00
Double the original amount	\$525.00
Total amount due to the tenants	\$1,054.09

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 **\$1,045.09**. The order must be served on the respondent 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: September 08, 2009.

Dispute Resolution Officer