



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing was convened upon joint applications filed by the tenants and the landlord.

The tenants seek:

1. The return of the security deposit; and
2. Recovery of the filing fee paid for this application.

The landlord seeks:

1. A monetary Order for unpaid rent;
2. An Order to be allowed to retain the security deposit; and
3. Recovery of the filing fee paid for this application.

Both parties appeared and gave evidence under oath.

Background and Evidence

The tenant's agent is the husband of SB who is the executor of the estate of the tenants who were her parents. The tenant's agent submits that the tenants, SAM and RSM moved into the rental unit in 2005 and paid a security deposit of \$312.00 on November 22, 2005. In or about April 2009, SAM and RSM died within weeks of each other. On June 10, 2009 SB wrote to the landlord advising that due to the death of her parents the rental unit would be vacated by June 30, 2009. Following this SB wrote again to the landlord to provide a forwarding address and request the return of the security deposit.

The landlord acknowledges receipt of the forwarding address on August 10, 2009. The evidence of both parties is that to date the landlord has not returned the deposit.

The landlord states that he did not return the deposit because the tenants did not give proper notice as required by the Act. The landlord says he is entitled to rent for the notice period that is the month of July 2009 in the sum of \$674.05. Further, the landlord says the tenants did not clean the carpets when they vacated and he is entitled to recover the \$85.00 he paid to have the carpets cleaned. The landlord is therefore seeking a monetary order in the sum of \$759.05 and seeks to retain the security deposit in partial satisfaction of that sum.

With respect to carpet cleaning the agent for the tenant states that although they did not clean the carpet upon vacating the rental unit they did have the carpet cleaned shortly prior to moving the furnishings out of the apartment and they felt this would suffice.

Analysis

Section 38(1) of the Act requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives a tenants' forwarding address writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit.

If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the deposit (section 38(6)).

Based on the undisputed evidence of the tenant I find that the landlord has not complied with Section 38 of the Act and the tenant is therefore entitled to a monetary order amounting to double the deposit with interest calculated on the original amount only.

With respect to the landlord's claim for rent for the notice period, Section **45** of the Act Sets out that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that:

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement

The evidence shows that the tenants gave their notice June 10, 2009. The earliest possible time the tenancy could have ended is therefore July 31, 2009. Rent was not paid for the month of July and I therefore find that the landlord is entitled to rent for the month of July in the sum claimed.

With respect to the landlord's claim for \$85.00 for carpet cleaning, although I accept that the tenants cleaned the carpets just prior to vacating the rental unit, the evidence is that they did so with their furnishings still in place. As a result I find it reasonable that the landlord had the carpets cleaned once the rental unit was empty and I find the charge of \$85.00 to be reasonable and I will allow the landlord this sum.

Having both been successful in their applications to some extent, I will not award recovery of the filing fee to either party.

Calculation of monetary award payable by the tenants to the landlord:

Security Deposit paid on November 22, 2005	\$312.00
Double Security Deposit	312.00
Interest on original amount paid from date security deposit paid to date of this order	11.05
Less monetary award in favour of landlord	-759.05
BALANCE DUE BY THE TENANTS TO THE LANDLORD	(\$124.00)

The landlord is provided with an Order in the above terms and the tenants must be served with a copy of this Order as soon as possible. Should the tenants fail to comply with this Order, this 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 *Residential Tenancy Act*.