



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenants' application for return of double the security deposit and recovery of the filing fee. The landlord and one of the applicant tenants appeared at the hearing and were provided the opportunity to be heard and to respond to the other party's submissions with respect to the tenants' application.

The tenant stated he had not received the landlord's evidence package. The landlord testified it was given to a man who lived in the same residential property as the tenants. The tenant identified the man as a neighbour. I determined the evidence was not served in a manner that complies with the Act and I did not accept the documentary evidence. Rather, the landlord was provided the opportunity to provide oral evidence.

Issues(s) to be Decided

Are the tenants entitled to return of double the security deposit?

Background and Evidence

The parties provided undisputed testimony as follows. The tenancy commenced March 1, 2007 and the tenants paid a \$475.00 security deposit at the commencement of the tenancy. The landlord did not prepare a move-in or move-out inspection report. The tenancy ended March 31, 2010 when the tenants vacated the rental unit. The tenants provided a forwarding address in writing to the landlord before the tenancy ended. On

April 15, 2010 the tenants received a partial refund of the security deposit in the amount of \$404.18.

The tenant submitted the rental unit was left clean and undamaged at the end of the tenancy. The tenant stated that the landlord was not given written consent to make deductions from the security deposit.

The landlord submitted that he participated in condition inspections with the other tenant who was not in attendance at the hearing. The landlord was of the belief that inspection reports were recommended but not compulsory and that the unit was in very good condition at the beginning of the tenancy. The landlord stated that after the tenancy ended he mailed a letter to the tenants' forwarding address outlining a proposal for a deduction of \$70.82 for damages and there was no response to the letter. The landlord stated he was of the belief the tenants agreed with the proposal as there was no response and that the other tenant had verbally waived entitlement to interest on the security deposit for additional cleaning required.

Analysis

As the parties were informed during the hearing, the purpose of this hearing was to hear the tenants' application for return of double the security deposit and to determine whether the landlord complied with the Act in handling the security deposit or whether either party extinguished their right to the security deposit. Additional cleaning and damages to the rental unit are not issues for me to decide as the landlord has not made an application for dispute resolution. The landlord is at liberty to make a separate application for cleaning and damages within two years of the tenancy ending.

The Act requires the landlord to meet inspection report requirements at the beginning and end of every tenancy. Section 23 of the Act provides, in part:

(4) The landlord must complete a condition inspection report in accordance with the regulations.

(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

Section 24 of the Act provides consequences where the inspection report requirements are not met. Section 24 provides, in part:

(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

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

Section 38 of the Act provides for the return of security deposits. Section 38 permits a landlord to obtain a tenant's written consent for deductions for damages if the landlord has met the inspection report requirements. In this case, tenant did not provide the landlord with written consent for any deductions and the landlord did not meet the inspection report requirements so the landlord could not have legally obtained the tenant's written consent to made deductions for damages. Accordingly, the landlord was required to comply with section 38(1) of the Act by either returning the security deposit and interest to the tenants or making an application for dispute resolution within 15 days from the later of the day the tenancy ended or the date the landlord received the tenants' forwarding address in writing.

Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit. The requirement to pay double the amount of the deposit is not discretionary and must be administered in accordance with the Act.

I find that the tenancy ended and the tenants provided a forwarding address to the landlord in writing but the landlord only repaid a portion of the security deposit within 15 days. The landlord did not have the legal right to retain \$70.82 of the security deposit. I find the balance of the security deposit held by the landlord more than 15 days after the tenancy ended was \$70.82 and the landlord must now pay the tenants double that amount, plus interest on the amount of the original deposit.

As the tenants were successful in establishing the landlord violated the Act with respect to making deductions from the security deposit, the tenants are awarded the filing fee paid for making this application. I calculate that the landlord is obligated to pay the tenants the following amount:

Double security deposit (\$70.82 x 2)	\$ 141.64
Interest on deposit	13.38
Filing fee	<u>50.00</u>
Monetary Order for tenants	<u>\$ 205.02</u>

The tenants must serve the enclosed Monetary Order upon the landlord and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The tenants have been provided a Monetary Order in the amount of \$205.02 to serve upon the landlord.

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: August 24, 2010.

Dispute Resolution Officer