



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, FF

Introduction

This was an application by the tenants for the return of their security deposit

Issues(s) to be Decided

Are the tenants entitled to a monetary order for the return of their security deposit?

Background and Evidence

The tenancy began March 1, 2009. Monthly rent was \$1,220.00. The tenants paid a security deposit of \$610.00 at the commencement of the tenancy. On February 28, 2010 the tenants gave the landlord written notice that they were moving out on March 31, 2010. The tenants returned the keys to the landlord and provided a written forwarding address on March 31, 2010. The landlord's representative acknowledged receiving the tenants' forwarding address.

The landlord did not return the tenants' security deposit; instead it sent a list of charges said to have been deducted from the deposit and demanded payment of an additional amount from the tenants. As of the date of this hearing that landlord has not filed an application for dispute resolution to claim the security deposit. The tenants did not consent to the retention of the security deposit.

As part of its evidence the landlord submitted a copy of its standard form to tenants setting out suite cleaning charges and its policy with respect to security deposits and

their return. The landlord said the form was given to the tenant on March 8, 2010. In that document the landlord said with respect to the return of security deposits: "Once the suite has been checked and any charges deducted, you will receive the balance within 15 business days after the keys have been returned to this office, as per the Residential Tenancy Act."

Analysis and conclusion

The references to the *Residential Tenancy Act* in the landlord's form given to tenants before move-out are incorrect and misleading inasmuch as the landlord has no right to deduct any charges from the security deposit without the tenants' written consent to the specific charges. The provisions of section 3.02 of the landlord's form of tenancy agreement, part of the "additional terms" portion of the agreement, are also contrary to the provisions of the *Residential Tenancy Act* with respect to security deposits.

Section 38(1) of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later.

Section 38(6) of the Act provides that if the landlord does not comply with these provisions 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.

I am satisfied that the tenants provided the landlord with their written forwarding address and that they served the landlord with documents notifying the landlord of this application as required by the legislation. The security deposit was not refunded within 15 days as required by section 38 and the doubling provision of section 38(6) therefore applies. I grant the tenants' application and award them the sum of \$1,220.00. No interest has accrued on the deposit. The tenants are entitled to recover the \$50.00 filing fee for this application for a total claim of \$1,270.00 and I grant the tenants a monetary order in the said amount. This order may be registered in the Small Claims Court and enforced as an order of that Court.