

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with the tenants' application pursuant to section 38 of the *Residential Tenancy Act* (the *Act*) for authorization to obtain a return of all or a portion of their security deposit and authorization to obtain recovery of their filing fee for their application from the landlord pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. As the landlords said that they received the tenants' November 1, 2010 dispute resolution hearing package by registered mail, I am satisfied that the tenants served this package in accordance with the *Act*.

### Issues(s) to be Decided

Are the tenants entitled to obtain the return of all or a portion of their security deposit from the landlords? Are the tenants entitled to recover their filing fee?

### Background and Evidence

This six-month fixed term tenancy commenced on April 1, 2010. Monthly rent was set at \$1,100.00. The tenants paid a \$550.00 security deposit on April 1, 2010. The parties conducted a joint move-in condition inspection on April 1, 2010, and the landlords provided the tenants with a report of that inspection.

The tenants vacated the rental premises on September 30, 2010. Although they participated in a joint move-out condition inspection that day with the landlord(s), the landlords did not prepare a move-out condition inspection report. The tenants gave undisputed oral testimony that they provided the landlords with a copy of their new forwarding address that day when they requested the return of their security deposit.

The tenants entered into written evidence a copy of the October 14, 2010 letter that the landlord enclosed with the landlords' \$387.60 cheque for a portion of the tenants' security deposit. The tenants applied for a monetary Order of \$550.00, the amount of their entire security deposit. The female landlord confirmed that she withheld \$162.40 from the tenants' security deposit, the expense the landlords incurred for professional carpet cleaning in the rental unit after the tenants ended their tenancy. The landlords said that the tenants did not conduct a thorough cleaning of the rental unit when they left. She said that the landlords had to retain a professional carpet cleaning company to ready the premises for new tenants. The tenants entered into written evidence a copy of the landlord's \$162.40 receipt for professional carpet cleaning. Although the

landlords did not dispute the tenants' claim that the landlords had alleged that their Residential Tenancy Agreement required professional carpet cleaning, the landlords confirmed at the hearing that no such provision is present in that Agreement.

### 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 the tenant's forwarding address, to either return the deposit or file an Application for Dispute Resolution for an Order to make a claim to retain the deposit. The landlords testified that they did not apply for dispute resolution to authorize their retention of a portion of the tenants' security deposit. If the landlord fails to comply with section 38(1) of the *Act*, 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)).

Subsection 36(2)(c) of the *Act* reads in part as follows:

**36** (2) *Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit...for damage to residential property is extinguished if the landlord...*

*(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.*

The following provisions of Policy Guideline 17 of the Residential Tenancy Policy Guidelines would seem to be of relevance to the consideration of this application:

### **RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION**

**3.** *Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:*

- if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;...*
- whether or not the landlord may have a valid monetary claim...*

Although the landlords did not comply with the above requirements of the *Act*, I am satisfied that they did return the \$387.60 portion of the security deposit to the tenants within 15 days of receiving the tenants' forwarding address for doing so. I find that the landlords had no legal basis for withholding the remaining \$162.40 of the tenants'

\$550.00 security deposit. The landlords did not file an application for dispute resolution within 15 days of receiving the tenants' forwarding address in writing, nor did they obtain the tenants' written permission to withhold these funds. As noted in Policy Guideline 17, the validity of any monetary claim that the landlord may have against the tenants has no bearing on the landlords' obligation to return the entire security deposit to the tenants in accordance with section 38 of the *Act*.

Under these circumstances, I find that the tenants are entitled to a monetary Order amounting to double that portion of their security deposit that was not returned to them by the landlords in October 2010 plus interest. No interest is payable over this period. As the tenants have been successful in their application, I allow them to recover their \$50.00 filing fee for this application from the landlords.

### Conclusion

I grant the tenants a monetary Order in the following terms which allows the tenants to obtain double that portion of their security deposit that was not returned to them by the landlords in October 2010 plus the recovery of their filing fee for their application.

Item	Amount
Total Unreturned Portion of Tenants' Security Deposit Owing x Two (\$550.00 – \$387.60 = \$162.40 x 2 = \$324.80)	324.80
Filing Fee	50.00
<b>Total Monetary Order</b>	<b>\$374.80</b>

The tenants are provided with these Orders in the above terms and the landlord(s) must be served with a copy of these Orders as soon as possible. Should the landlord(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.