



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants for a Monetary Order for the return of double their security damage deposit and to recover the cost of the filing fee from the Landlords for this application.

Service of the hearing documents, by the Tenants to the Landlords, was done in accordance with section 89 of the *Act*, sent via registered mail on October 6, 2010 to the Landlords' home address. The Tenants provided a copy of the registered mail receipt sent to the Landlords and I am satisfied that they were served in the time and manner in accordance with the *Act*.

Though duly served, the Landlords did not appear.

The Tenants appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

Are the Tenants entitled to a Monetary Order under sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

This tenancy began on November 1, 2008 and ended on May 26, 2010. A security deposit of \$450.00 was paid on or about November 1, 2008.

The Tenants supplied evidence and gave affirmed testimony that the Landlords were provided the Tenants' written forwarding address, sent via registered mail on June 16, 2010. I note the Landlords acknowledged receiving the Tenants' forwarding address in a letter of response dated July 4, 2010, written to the Tenants.

The Tenant JA stated that he remembered performing some type of a viewing of the rental unit upon move in, but not a move out inspection. The Tenants testified that they never received a copy of any move in or move out inspection or written report.

The Landlords have not filed for Dispute Resolution.

Analysis

Based on the testimony, evidence and a balance of probabilities, I find as follows:

I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenants would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the Applicant pursuant to section 7.

In this case the evidence and testimony supports that the Tenants provided the Landlord with their written forwarding address on June 16, 2010 via registered mail and the evidence of the Tenants verify the Landlords actually received the notice on July 25, 2010.

The Landlords did not apply for dispute resolution to keep all or part of the security deposit, do not have an Order allowing them to keep the security deposit, and do not have the Tenants' written consent to retain the security deposit.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security and pet damage deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

A document served via registered mail is deemed served in 5 days under the *Act*. In this case the Landlord was required to return the Tenants' security deposit in full or file for dispute resolution no later than August 5, 2010.

Based on the above, I find that the Landlords failed to comply with Section 38(1) of the *Act* and that the Landlords are now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet damage deposit and the landlord must pay the tenant double the security and pet damage deposit. In the absence of proof from the Landlords, I find that the Tenants have succeeded in proving the test for damage or loss as listed above and I approve their claim for the return of their security deposit.

I find that the Tenants have succeeded with their application therefore I award recovery of the \$50.00 filing fee.

Monetary Order – I find that the Tenants are entitled to a monetary claim as follows:

Doubled Security Deposit owed 2 x \$450.00	\$900.00
Filing Fee	<u>50.00</u>
TOTAL AMOUNT DUE TO THE TENANTS	\$951.12

Pursuant to the policy guideline, I have provided the Tenants with a monetary order in these terms. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenants are granted a monetary order for **\$951.12**.

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: February 02, 2011.

Residential Tenancy Branch