



Dispute Resolution Services

Page: 1

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 the balance of their security deposit and to recover the cost of the filing fee from the Landlord for this application.

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

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

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 or about May 1, 2010, and ended on or about August 31, 2010. A security deposit of \$750.00 was paid on or about April 16, 2010. There was no written move out condition inspection report

The Tenants' Agent gave affirmed testimony that the Landlord was provided the Tenants' forwarding address at the end of the tenancy, on August 31, 2010. The Landlord agreed with this testimony.

The Tenants' Agent stated the Landlord deducted \$150.00 from the security deposit for a vacuum repair and painting and returned the amount of \$600.00.

The Landlord testified that he performed a walk through with the Tenants at the end of the tenancy, observing and making comments of the condition of the rental unit. The Landlord affirmed payment of the \$600.00 to the Tenants.

The Landlord has 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 Applicants pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss; in this case the Tenants bear the burden of proof.

In this case the evidence and testimony supports that the Tenants provided the Landlord with their written forwarding address on or about August 31, 2010.

The Landlord did not apply for dispute resolution to keep all or part of the security deposit, does not have an Order allowing him to keep the security deposit, and does not have the Tenants' written consent to retain the security or pet damage 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 deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the Landlord was required to return the Tenants' full security deposit or file for dispute resolution no later than September 15, 2010.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is 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 deposit and the landlord must pay the tenant double the security deposit.

Therefore 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 the remaining portion of their security deposit, that being \$150.00, doubled.

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:

Portion of the Security Deposit owed, doubled 2 x \$150.00	\$300.00
TOTAL AMOUNT DUE TO THE TENANTS	\$350.00

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 \$350.00.

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 23, 2011.

Residential Tenancy Branch