

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord's representative (the landlord) confirmed that on November 27, 2010, the tenants handed the landlord's building manager their written notice that they were ending their tenancy by December 31, 2010. She also agreed that the tenants provided their forwarding address in writing in that November 27, 2010 notice. The male tenant (the tenant) entered written evidence that the tenants sent the landlord a copy of their dispute resolution hearing package by registered mail on February 13, 2011. The tenant said that this package was returned unclaimed on February 18, 2011. He provided a Canada Post Tracking Number to confirm this mailing. The tenant also testified that he handed the landlord's former building manager another copy of the dispute resolution hearing package on February 12, 2011. The landlord confirmed that the landlord received the tenants' dispute resolution hearing package. I am satisfied that the tenants served their dispute resolution hearing package in accordance with the *Act*.

Issues(s) to be Decided

Are the tenants entitled to obtain a return of double their security deposit? Are the tenants entitled to recover the filing fee for their application from the landlord?

Background and Evidence

This tenancy commenced as a one-year fixed term tenancy on May 2, 2008. At the end of the fixed term, the tenancy converted to a month-to-month tenancy. Monthly rent by the end of the tenancy was set at \$670.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$335.00 security deposit paid on April 18, 2008, plus interest.

The tenants applied for a return of double their security deposit as they maintained that the landlord had not returned any portion of their security deposit within 15 days of their ending this tenancy. As noted above, the parties agreed that the tenants provided written notice of their forwarding address to the landlord on November 27, 2011.

The landlord said that the rental premises were not clean when the tenants vacated the rental unit. The tenants submitted undisputed evidence of a May 1, 2008 joint move-in condition inspection report and of a December 31, 2010 joint move-in condition inspection report. There was no substantive or meaningful difference in these two reports, both co-signed by the landlord's representatives. The tenants also submitted photographic evidence of the condition of the premises when they vacated the rental unit.

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 in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), 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) of the *Act*). With respect to the return of the security deposit the triggering event is the provision by the tenant of the forwarding address or the end of the tenancy, whichever comes later.

I find that the landlord has not returned the security deposit within 15 days of the date that the tenants vacated the rental unit, December 31, 2010. The tenant is therefore entitled to a monetary order amounting to double the security deposit with interest calculated on the original amount only.

Since the tenants have been successful in their application, I allow them to recover their filing fees for their application from the landlord.

Conclusion

I issue a monetary Order in the tenants' favour in following terms which allows the tenants to obtain double their security deposit plus applicable interest and the recovery of their filing fee for their application.

Item	Amount
Security Deposit paid on April 18, 2008	\$335.00
Double Security Deposit	335.00
Interest on original amount paid from date security deposit paid to date of this order	3.54
Filing Fees	50.00
TOTAL MONETARY ORDER	\$723.54

The tenants are provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord 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*.