



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an application by the tenants for return of the security deposit and recovery of the filing fee. Both parties participated in the conference call hearing and gave affirmed testimony.

Issue(s) to be Decided

Are the tenants entitled to any of the above under the Act.

Background and Evidence

This tenancy began March 1, 2010 with monthly rent of \$1000.00 and the tenants paid a security deposit of \$500.00

The tenants stated that they vacated the rental unit March 1, 2011 but that the landlord only returned \$86.00 of their \$500.00 security deposit. The tenants stated that they provided the landlord with their forwarding address in writing during a walk-through of the apartment in late February 2011.

The landlords testified that the tenants had agreed to delay return of the security deposit as the landlords were waiting for an estimate for repair to the elevators that was presumably the tenants fault. The landlord eventually returned \$86.00 of the security deposit to the tenants, holding back costs for repairs and strata move-out fees.

The landlords stated that they had understood the move-out condition inspection report was for claiming against the security deposit and did not realize that an application had to be made through this office.

The tenant's in this application are seeking \$914.00 which is comprised of the \$500.00 security deposit minus \$86.00 already returned by the landlord for a balance of \$414.00 plus \$500.00.

Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenant has met the burden of proving that they have grounds for entitlement to a monetary order for return of double the security deposit.

Within 15 days of receiving the tenant's forwarding address in writing or from the end of the tenancy the landlords neither returned the security deposit in full to the tenants nor made a claim against the security deposit. The tenants have also not signed off on releasing the security deposit to the landlords on the move-out condition inspection report.

Residential Tenancy Act **Section 38 Return of security deposit and pet damage deposit** speaks to:

- (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of*
 - (a) the date the tenancy ends, and*
 - (b) the date the landlord receives the tenant's forwarding address in writing,**the landlord must do one of the following:*
 - (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;*
 - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.*
- (2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].*
- (3) A landlord may retain from a security deposit or a pet damage deposit an amount that*
 - (a) the director has previously ordered the tenant to pay to the landlord, and*
 - (b) at the end of the tenancy remains unpaid.*
- (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,*
 - (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or*
 - (b) after the end of the tenancy, the director orders that the landlord may retain the amount.*
- (5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [landlord failure to meet start of tenancy condition report requirements] or 36 (2) [landlord failure to meet end of tenancy condition report requirements].*
- (6) If a landlord does not comply with subsection (1), 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.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [service of documents] or give the deposit personally to the tenant.

Accordingly I find that the tenants are entitled to a monetary order for \$914.00.

As the tenants have been successful in their application the tenants are entitled to recovery of the \$50.00 filing fee.

Conclusion

I find that the tenants have established a monetary claim for **\$914.00** in return of double the security deposit. The tenants are also entitled to recovery of the \$50.00 filing fee. I grant the tenant a monetary order under section 67 of the *Act* for **\$964.00**.

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: August 15, 2011.

Residential Tenancy Branch