



Dispute Resolution Services

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 an order for the return of double their security deposit. Both parties participated in the conference call hearing.

Issue to be Decided

Are the tenants entitled to a order for the return of double their security deposit?

Background and Evidence

The facts are not in dispute. The tenants paid a \$425.00 security deposit in September 2010, gave their forwarding address to the landlord in early April 2011 and vacated the rental unit at the end of April. At the end of May, the tenants received from the landlord a cheque for \$12.27, which was the amount of the security deposit to which the landlord felt they were entitled.

The landlord argued that she sent an email to the tenants on May 2 in which she outlined the work required to clean the unit and because she did not receive an answer to that email, she believed she had the tenants' consent to retain the deposit.

Analysis

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. I find the landlord received the tenants' forwarding address in early April, that they vacated the rental unit at the end of April and that the landlord had to deal with the deposit no later than May 15, 2011. I do not accept that the tenants' failure to respond to the May 2 email constituted written agreement for the landlord to retain the deposit as is required under section 38(4)(a) of the Act. I find the landlord failed to repay the security deposit or make an application for dispute resolution by May 15 and is therefore liable under section 38(6) which provides that the landlord must pay the tenants double the amount of the security deposit. I

award the tenants \$900.00 which represents \$850.00 as the double security deposit and \$50.00 for the filing fee paid to bring this application, which I find they are entitled to recover.

At the hearing, the tenants acknowledged that they owed the landlord \$110.66 for utilities and asked that this amount be deducted from the award. I therefore deduct this sum from the \$900.00 award and give the tenants an order for the balance of \$789.34. I have not applied the \$12.27 cheque which the tenants currently hold as they have not yet negotiated the cheque. If they choose to negotiate that cheque, the amount payable by the landlord will be reduced accordingly.

Conclusion

I grant the tenant an order under section 67 for \$789.34. This order may be filed in the Small Claims Court and enforced as an order 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*.

Dated: September 06, 2011

Residential Tenancy Branch