



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 a monetary order. Both parties participated in the conference call hearing.

Issue to be Decided

Are the tenants entitled to a monetary order as claimed?

Background and Evidence

The facts are not in dispute. The tenancy began on June 1, 2010 at which time a \$762.50 security deposit was paid and ended on April 30, 2011. The written tenancy agreement provided that a rent increase would take effect on September 1, 2010. At the end of the tenancy, the landlord mailed to the tenants a cheque for the refund of their security deposit less \$39.24 which she had deducted for the cost of replacing burned out light bulbs.

The landlord testified that she mailed the security deposit refund on or about May 8, 2011 and the tenants acknowledged having received the cheque sometime in mid-May, although they could not recall the exact date.

The tenants seek to recover the amount paid from September 1 to the end of the tenancy, maintaining that it was an illegal rent increase. They also seek an award for double their full security deposit and recovery of the \$50.00 filing fee paid to bring their application.

Analysis

Section 43(1)(c) of the Act permits landlords to impose a rent increase agreed to by the tenant in writing and section 43(2) prohibits tenants from applying for dispute resolution to dispute such a rent increase. I find that the rent increase was agreed to in writing and therefore may not be disputed. I dismiss that part of the tenants' claim.

I find that the landlord returned \$723.26 of the deposit within 15 days as required by the Act but illegally withheld \$39.24. Section 38(6) of the Act provides that landlords who fail to return the security deposit or file a claim against it must pay the tenants double the amount of the security deposit.

Although the tenants have claimed double the entire security deposit, I find that a more reasonable interpretation of section 38(6) leads to the doubling of the security deposit still held by the landlord. On May 16, 2011, the day after the expiry of the 15 day timeframe for the landlord to make a claim, the landlord only held a \$39.24 security deposit and I find that the tenants are entitled to an award of double that amount. I award the tenants \$78.48.

As the tenants have been partially successful in their claim, I find it appropriate to award them one half of their filing fee. I award the tenants \$25.00.

Conclusion

The tenants have been awarded \$103.48 and I grant them a monetary order under section 67 for that sum. This order may be filed in the Small Claims Division of the Provincial 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 07, 2011

Residential Tenancy Branch