



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 the tenants' Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and the two tenants.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for double the amount of the security deposit; for compensation for the loss of quiet enjoyment and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 28, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy began in January 2011 as a 4 month fixed term tenancy that was extended to June 30, 2011 for a monthly rent of \$800.00 due on the 1st of each month with a security deposit of \$400.00 paid.

The tenancy ended when the tenants vacated the rental unit on July 1, 2011. The tenants testified they provided the landlord with their forwarding address in writing by mail on July 5, 2011. The landlord testified he received their forwarding address on July 14, 2011.

The parties agree the landlord provided the tenants with \$375.00 of their security deposit but that the landlord withheld \$25.00. The landlord acknowledged in his testimony that he has come to understand that he had no authority to retain any amount without the tenants' agreement or filing an Application for Dispute Resolution.

The tenants also seek to be compensated for the loss of quiet enjoyment as they assert the landlord has been harassing them in relation to the security deposit for several months and for the loss of time spent on paper work and upset.

Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

I accept the landlord failed to provide the tenants with the return of their full security deposit in accordance with Section 38(1) and the tenants are entitled to compensation in the amount of \$800.00 less the amount received of \$375.00 for a total of \$425.00.

As to the tenants' claim for the loss of quiet enjoyment as contemplated under Section 28 of the *Act*, I find that circumstances that the tenants assert that the landlord impacted their quiet enjoyment under occurred after the end of the tenancy. Section 28 is not applicable to parties who are not in a tenancy agreement, I therefore dismiss this part of the tenants' Application.

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$475.00** comprised of \$425.00 balance owed from doubling the security deposit and the \$50.00 fee paid by the tenants for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be 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: October 21, 2011.

Residential Tenancy Branch