



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants for a Monetary Order for the return of double their security deposit and to recover the cost of the filing fee from the Landlords for this application.

Service of the hearing documents, by the Tenants to each Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on August 19, 2011. Canada Post tracking receipts were provided in the Tenants' testimony. Based on the submissions of the Tenants I find the Landlords have been sufficiently served notice of this proceeding in accordance with section 89 of the *Act*.

The Tenants appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

1. Have the Landlords breached section 38 of the *Residential Tenancy Act* by failing to return the Tenant's security deposit?
2. If so, have the Tenants met the burden of proof to obtain a Monetary Order as a result of that breach, pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

The parties entered into a fixed term tenancy agreement that began on June 1, 2011 and was set to switch to a month to month tenancy after six month, however the Landlords wrote December 31, 2011 as the end date on the tenancy agreement. Rent was payable on the first of each month in the amount of \$1,650.00. The Tenants paid \$825.00 on May 19, 2011 as the security deposit and on June 1, 2011 they paid \$412.50 as the pet deposit. Although the parties did a walkthrough of the unit no move in or move out inspection reports were completed by the Landlords.

The Tenants affirmed that the tenancy ended July 31, 2011, after they provided written notice to end the tenancy, and that they had the carpets professionally cleaned on July 30, 2011 as per the invoice they provided in their evidence. They personally served the Landlords with their forwarding address in writing on August 1, 2011, during the move out walk through. The Landlords had set up a meeting a few days later for the return of their deposits however neither Landlord showed up for that meeting. Then approximately two weeks after the end of the tenancy they found a letter in their mailbox that did not have a stamp on it which contained the return of their pet deposit. The Landlords do not accept their calls and does not return their messages. They are seeking the return of double their security deposit.

Analysis

I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenants would be required to prove that the other party did not comply with the *Act*. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss; in this case the Tenants, bears the burden of proof.

I accept the evidence that the tenancy ended July 31, 2011 and that the Tenants provided the Landlords with their forwarding address, in writing, on August 1, 2011.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the Landlords were required to return the Tenants' security deposit in full or file for dispute resolution no later than August 16, 2011. The Landlords did neither.

Based on the above, I find that the Landlords have failed to comply with Section 38(1) of the *Act* and that the Landlords are now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

Based on the aforementioned, I find that the Tenants have succeeded in proving the test for damage or loss as listed above and I approve their claim for the return of double the security deposit plus interest in the amount of **\$1,650.00** (2 x \$825.00 + \$0.00 interest).

The Tenants have succeeded with their application; therefore I award recovery of the **\$50.00** filing fee.

Conclusion

The Tenants' decision will be accompanied by a Monetary Order in the amount of **\$1,700.00** (\$1,650.00 + \$50.00). This Order is legally binding and must be served upon the respondent Landlords.

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: November 21, 2011.

Residential Tenancy Branch