



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 pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

The male tenant (the tenant) who attended the hearing and who spoke on behalf of both tenants, said that on or about May 30, 2011 he provided oral notice of the tenants' intention to end this tenancy by June 30, 2011 to the landlord's representative. The landlord testified that no formal written notice to end this tenancy was given by the tenants. The landlord confirmed that the landlord received the tenants' dispute resolution hearing package by registered mail on August 5, 2011. I am satisfied that the tenants served the hearing package to the landlord and the landlord served written evidence to the tenants in accordance with the *Act*. The tenants did not submit any written evidence.

Issues(s) to be Decided

Are the tenants entitled to obtain a return of all or a portion of their security deposit from the landlord? Are the tenants entitled to obtain a monetary award equivalent to the amount of their security deposit pursuant to section 38(6) of the *Act* for the landlord's failure to comply with section 38 of the *Act*? Are the tenants entitled to recover their filing fee from the landlord?

Background and Evidence

This tenancy commenced by way of a one-year fixed term tenancy agreement starting on October 1, 2008. The initial monthly rent was set at \$920.00. The parties signed a new one-year fixed term tenancy agreement covering the period from October 1, 2009 until September 30, 2010. Monthly rent was set at \$954.00 for that period, payable in advance on the first of each month. The landlord retains the tenants' \$460.00 security deposit paid on October 1, 2008.

The landlord entered into written evidence a copy of a joint move-in condition inspection report of October 1, 2008 and a joint move-out condition inspection report of June 30, 2010. In the move-out condition inspection report, the tenant signed a statement agreeing that this report fairly represented the condition of the rental unit. In this report, the landlord noted the following charges that were shown as “Deductions from Security Deposit and/or costs of damages, etc.)” in the Tenant Security Deposit Summary:

Item	Amount
Lease Break Charges : July Rent	\$954.00
Carpet Cleaning	85.00
Blind Cleaning/Repairs (84 x 2.25)	189.00
Cleaning (10 hours)	250.00
Total Security Deposit Deductions	\$1,478.00

At the hearing, the tenant testified that the joint move-out condition inspection report he signed and initialled on June 30, 2010 did not include deductions for Blind Cleaning and Cleaning. He said that these items were added to this section of the report after he signed the report. The landlord did not have any direct knowledge of whether these items were added after the tenant signed the report.

In the landlord's written evidence, the landlord noted that the tenants had not paid anything towards the Lease Break Charge, equivalent to the landlord's loss of rent for July 2010. The landlord confirmed that the landlord had not yet submitted a separate application for dispute resolution to recover this charge and any damages or losses the landlord incurred during this tenancy.

Analysis

Pursuant to section 63 of the *Act*, the dispute resolution officer may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

During this hearing, the parties reached an agreement to settle all matters arising out of this tenancy on the following terms:

1. The tenant agreed to withdraw the tenants' current application for dispute resolution.
2. Both parties agreed that all monetary issues arising out of this tenancy will be resolved by the tenants' payment of \$604.00 to the landlord by March 31, 2012.

3. Both parties established that their agreement constitutes a final and binding resolution of all matters in dispute arising out of this tenancy.

Conclusion

In order to implement the above settlement reached between the parties, I issue a monetary Order in the landlord's favour in the amount of \$604.00. I deliver this Order to the landlord in support of the above agreement for use in the event that the tenants do not abide by the terms of the above settlement. As per the parties' agreement, I allow the landlord to retain the tenants' security deposit.

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with a copy of these Orders as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: November 03, 2011

Residential Tenancy Branch