



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 tenants and the one of the landlords.

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 and pet damage deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenants submitted into evidence a copy of a tenancy agreement signed by the parties on June 17, 2010 for a 1 year fixed term tenancy that began on August 1, 2010 and converted to a month to month tenancy on August 1, 2011 for a monthly rent of \$1,200.00 due on the 1st of each month and a security deposit of \$600.00 and a pet damage deposit of \$600.00 were paid.

The tenants submit they vacated the rental unit on August 24, 2011 and the landlord provided a post dated cheque for September 15, 2011 for the full amount of the security deposit and pet damage deposit in the amount \$1,200.00. The tenants indicate that the cheque was returned as "insufficient funds."

The landlord testified that her husband had, unbeknownst to her, emptied the company business account and the cheque was not honoured. The landlord testified also that the tenants had not provided her with a forwarding address until after the cheque had been returned.

The tenants confirmed they provided the landlord with their forwarding address on September 17, 2011 and that the landlord returned the pet security deposit on September 22, 2011. The landlord confirmed on December 7, 2011 she filed an Application for Dispute Resolution seeking to retain the security deposit, for damages to the flooring in the rental unit.

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.

As per the testimony of both parties, I accept the landlord received the tenants' forwarding address by September 17, 2011. As such, the landlord had until October 2, 2011 to return both the pet damage deposit and the security deposit to the tenants or file an Application for Dispute Resolution seeking to claim the security deposit.

I accept, by the testimony of both parties, that the landlord provided the tenants with the pet damage deposit on September 22, 2011 and the landlord has fulfilled her obligations of returning the pet damage deposit. I therefore dismiss the portion of the tenants' Application seeking return of double the amount of the pet damage deposit.

However, as the landlord still holds the tenants' security deposit and did not submit an Application for Dispute Resolution until December 7, 2011, I find the landlord has failed to comply with her obligations under Section 38(1) and the tenants are entitled to the compensation outlined in Section 38(6).

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,250.00** comprised of \$1,200.00 double the amount of the security deposit and the \$50.00 fee paid by the landlord 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: December 12, 2011.

Residential Tenancy Branch