



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call in repose to the tenant's application for a Monetary Order for the return of double the security deposit; and to recover the filing fee from the landlords for the cost of this application.

The tenant and landlords attended the conference call hearing, gave sworn testimony. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to recover double the security t deposits?

Background and Evidence

Both parties agree that this month to month tenancy started on or about April 2008 and ended on October 15, 2011. Rent for this unit was \$1,100.00 and was due on the first day of each month in advance. The tenant paid a security deposit of \$550.00 on March 15, 2008.

The tenant testifies that she gave the landlords her forwarding address in writing on October 14, 2011 by email which the landlords responded to. The tenant testifies she

verbally requested the return of her security deposit and also requested the landlords to return her security deposit by email. The tenant states the landlords' failed to return the deposit within 15 days and the tenant therefore seeks to recover double the deposit to the sum of \$1,100.00 plus any accrued interest.

The tenant states the landlords did not complete either a move in condition inspection or a move out condition inspection at the beginning or end of the tenancy.

The landlord testifies that they did not complete a move in condition inspection report with the tenant but did a walkthrough of the property with the tenant on March 15, 2008 and the tenant agreed that everything was fine.

The landlords' state they kept the tenants security deposit as the tenant had failed to repair damage found in the unit and had not cleaned the unit.

Analysis

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit and pet deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Sections 23(4) of the *Act* requires a landlord to complete a condition inspection report at the beginning of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign the condition inspection report. In failing to complete the condition inspection report when the tenant moved in, I find the landlord contravened s. 23(4) of the *Act*. Consequently, s. 24(2)(a) of the *Act* says that the landlords' right to claim against the security deposit for damages is extinguished.

When a landlords right to claim against the security deposit has been extinguished the landlords are not entitled to file a claim to keep the security deposit and if the deposit has not been returned to the tenant within 15 days of either the end of the tenancy or the date the tenant gives the landlords their forwarding address in writing the landlords must pay double the security deposit to the tenant.

Based on the above and the evidence presented I find that the landlord did receive the tenants forwarding address in writing dated October 14, 2011. This forwarding address was sent by e-mail, however the landlord acknowledged that they did receive the tenants address and did respond to the tenants concerning the address. As a result I am satisfied that the landlords did receive the tenants forwarding address on this date. The landlords had until October 29, 2011 to return the tenants security deposit. I find the landlords did not return the security deposit. Therefore, I find that the tenant has established a claim for the return of double the security deposit to the sum of **\$1,100.00** plus accrued interest on the original amount to the sum of **\$6.58** pursuant to section 38(6)(b) of the *Act*.

I also find the tenant is entitled to recover the **\$50.00** filing fee from the landlords pursuant to section 72(1) of the *Act*. The tenant is entitled to a Monetary Order as follows:

Double the security deposit plus accrued interest on original amount	\$1,106.58
Filing fee	\$50.00
Total amount due to the tenants	\$1,156.58

Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,156.58**. The order must be served on the respondent and is enforceable through the Provincial Court 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: January 23, 2012.

Residential Tenancy Branch