



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MSND FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to obtain a Monetary Order for the return of their security and pet deposits, for money owed for damage or loss under the Act, regulation, or tenancy agreement, and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Tenants and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Landlord managed the security and pet deposits in accordance with section 38 of the *Residential Tenancy Act*?
2. If not, have the Tenants specified that they wish to have only the original amounts of deposits returned?

Background and Evidence

The Landlord affirmed she did not send the Tenants copies of her evidence which was provided to the *Residential Tenancy Branch*.

The following facts were not in dispute:

- The parties entered into a written tenancy agreement that began on July 1, 2009 and ended August 31, 2011; and
- Rent was payable on the first of each month in the amount of \$1,650.00; and
- On or before July 1, 2009 the Tenants paid \$800.00 as the security deposit and \$800.00 as the pet deposit; and
- No condition inspection reports were completed at move in or at move out.

The Tenant affirmed that they provided the Landlord with their forwarding address verbally and in writing in an e-mail however he did not have the dates of when these were provided. He stated that at the end of the tenancy they had agreed to allow the Landlord to retain the pet deposit if she provided them with actual receipts to prove the cost of repairs. He argued that the Landlord was to return the full security deposit and any balances left over from the pet deposit after the repairs were completed.

The Landlord affirmed she received the Tenants' forwarding address via e-mail on October 27, 2011. She argued that the verbal agreement was between her and the female Tenant and that she was told she could keep the deposit and that there was never any discussion about seeing receipts for the repairs.

The Landlord confirmed she has not made application to retain the deposits, she does not have the Tenants' written permission to keep any of the deposits, and that their agreement was verbal.

In closing the Tenant clarified that he is seeking the return of the original amounts paid of \$1,600.00 (\$800.00 security deposit plus \$800.00 pet deposit) and not the double amount. He confirmed he understood how the process was to work and stated that he felt it would not be fair to double the amounts.

Analysis

The Landlord confirmed that she did not provide the Tenants with copies of her evidence which is a contravention of section 4.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore as the applicant Tenants have not received copies of the Landlord's evidence I find that the Landlord's evidence cannot be considered in my decision. I did however consider the Landlord's testimony.

The evidence supports that the parties entered into some type of verbal agreement however they disagree on what the terms of that agreement were.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this case, the Landlord has the burden to prove the terms of any agreement that would have allowed her to retain any of the deposits. Accordingly, the only evidence before me was

verbal testimony and I find the disputed verbal testimony insufficient to meet her burden of proof.

The evidence proves the tenancy ended August 31, 2011 and the Tenants provided the Landlord with their forwarding address on October 27, 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 Landlord was required to return the Tenants' security and pet deposits in full or file for dispute resolution no later than November 11, 2011.

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 and pet deposit and the landlord must pay the tenant double the security deposit.

In this case the Tenant has specifically waived the doubling of the deposits therefore I find the Tenant has succeeded in proving their claim and I award them the return of the original deposits in the amount of **\$1,600.00** (\$800.00 security deposit + \$800.00 pet deposit).

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 **\$1,650.00**. This Order is legally binding and must be served upon the Landlord.

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: April 03, 2012.

Residential Tenancy Branch