



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to obtain a Monetary Order for the return of double their security and pet deposits, for money owed or compensation 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 other 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 breached the *Residential Tenancy Act*, regulation or tenancy agreement?
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 following facts are not in dispute:

- The Tenants occupied the unit from February 1, 2011; and
- On February 18, 2009 the Tenants paid \$1,600.00 as the security deposit plus \$1,600.00 as the pet deposit; and
- The tenancy ended when the Tenants vacated the property January 30, 2012; and
- No condition inspection report form was completed at move in or at move out although the parties walked through the unit to inspect it on January 30, 2012; and

- The Tenants provided the Landlord their forwarding address in writing on January 30, 2012; and
- The Tenants provided the Landlord written permission to retain **\$614.66** from the security deposit as payment for water utilities of \$348.52 for Oct/Nov/Dec 2011; plus \$116.14 for water utilities for Jan 2012; plus \$150.00 which was a previous owed amount; and
- On February 14, 2012, the Landlord personally delivered to the Tenants a bank draft in the amount of \$2,369.56 withholding **\$830.44** from the deposits; and
- The Tenants cashed the bank draft on February 18, 2012; and
- The Landlord did not have the Tenants' written permission to with hold the additional \$215.78 (\$830.44 – \$614.66)

The Tenant affirmed they agreed to the above facts and they did not have anything further to add as they stated their claim was clearly described in their written statement provided in evidence.

After reviewing the above with the Landlord the Landlord's Agent affirmed they agreed with the above listed facts. The Agent confirmed the Landlord did not have an Order granting her authority to retain the additional funds from the deposits and she has not filed an application for dispute resolution to retain any portion of the security deposit.

Analysis

I have carefully considered the aforementioned and the documentary evidence which included, among other things, copies of the tenancy agreement, the letter informing the Landlord of the Tenants' forwarding address, and the Tenants' permission for the Landlord to retain money from the security deposit which now totals \$614.66.

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* and that this non-compliance resulted in losses to the Applicant pursuant to section 7. 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 bear the burden of proof.

The evidence proves the Landlord issued the Tenants a bank draft in the amount of \$2,369.56 which was personally delivered to the Tenants February 14, 2012. An amount of \$830.44 was retained by the Landlord even though the Landlord was only given permission to retain \$614.66.

The Landlord has admitted that she did not apply for dispute resolution to keep the additional money from the security deposit, she does not have an Order allowing her to keep the additional \$215.78, and she does not have the Tenants' written consent to retain the additional \$215.78 of the security deposit.

This tenancy ended January 30, 2012 and the evidence supports that the Tenant provided the Landlord with her forwarding address on January 30, 2012.

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 and pet deposits in full, to the tenant with interest or make application for dispute resolution claiming against the security deposit and pet deposit.

Section 38(7) of the *Act* stipulates a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

Therefore, in this case I find the Landlord was required to return the Tenants' pet deposit in full in the amount of \$1,600.00 plus the security deposit in the amount of \$985.34 (\$1,600.00 – agreed upon amount of \$614.66) or file for dispute resolution no later than February 14, 2012.

Upon review of the aforementioned I find the Landlord returned the pet deposit in accordance with section 38 (1) *Act* in the amount of \$1,600.00 + \$0.00 as interest with the bank draft that was personally delivered to the Tenants on February 14, 2012. I further find the Landlord did not comply with section 38 (1) of the *Act* in the manner in which she disbursed the security deposit as she returned only \$769.56 when she was required to return \$985.34 (\$1600.00 – 614.66).

Based on the above, the Landlord has failed to comply with Section 38(1) of the *Act* when disbursing the security deposit and the Landlord is 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.

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

Monetary Order – Accordingly, 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 less the amount previously remitted. I find that the Tenants are entitled to a monetary claim as follows:

Pet Deposit (actual amount plus interest of \$0.00)	\$1,600.00
Double the Security deposit owed	
2 x (\$1600.00 - \$614.66 + \$0.00 interest)	\$1,970.68
Filing Fee	<u>50.00</u>
SUBTOTAL DUE TO THE TENANTS	\$3,620.68
LESS BANK DRAFT PAYMENT	<u>-2,369.56</u>
Offset amount due to the TENANTS	<u>\$1,251.12</u>

Conclusion

The Tenant's decision will be accompanied by a Monetary Order for **\$1,251.12**. 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 18, 2012.

Residential Tenancy Branch