



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 return of double the security deposit. Both parties appeared at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Are the tenants entitled to return of double the security deposit?

Background and Evidence

I was provided the following undisputed information:

- On November 1, 2010 a tenancy commenced for unit #305 for the monthly rent of \$1,050.00 and the tenants paid a \$525.00 security deposit;
- On June 1, 2011 the tenants moved to unit #303 for the monthly rent of \$1,300.00 and their security deposit, plus an additional \$125.00, was applied to the tenancy agreement for unit #303;
- The tenancy agreement for unit #303 was documented by amending the tenancy agreement created for unit #305;
- The tenants did not authorize any deductions from the security deposit in writing;
- The tenants provided a forwarding address to the landlord on March 12, 2012; and,
- The tenants have not received a refund of their security deposit.

The parties were in dispute as to when the tenancy ended. The tenant submitted that the unit was vacated February 29, 2012 and two of the three sets of keys were returned to the landlord March 1, 2012. The landlord submitted that the tenants vacated March 1, 2012 and all sets of keys were not returned until March 5, 2012.

The landlord submitted that the tenants had verbally agreed that the landlord could retain the security deposit in exchange for breaking their lease. The tenant replied by

stating that they did not break the lease and they did not verbally agree to any deductions from the security deposit.

Evidence provided for this proceeding by the tenants included copies of the tenancy agreement(s); the forwarding address note given to the landlord; and, registered mail receipts.

Analysis

As the parties were informed during the hearing, the landlord's submission of loss of rent or other damages were not issues for me to decide for this proceeding as the landlord had not made an application for dispute resolution. The purpose of this hearing was to hear the tenants' application and determine whether the landlord complied with the Act with respect to the security deposit. The landlord is at liberty to make a separate application for damages or loss in accordance with the time limits permitted by the Act.

Section 38 of the Act provides for the return of security deposits. The Act permits a landlord to obtain a tenant's written consent for deductions for damages or loss. In this case, the landlord did not have written consent. Accordingly, the landlord was required to comply with section 38(1) of the Act by either returning the security deposit to the tenants or making an Application for Dispute Resolution within 15 days from the later of the day the tenancy ended or the date the landlord received the tenants' forwarding address in writing.

Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit. The requirement to pay double the amount of the deposit is not discretionary and must be administered in accordance with the Act.

When the tenants provided a forwarding address to the landlord in writing on March 12, 2012 the tenancy had already ended and possession was returned to the landlord. Accordingly, the landlord had until March 27, 2012 to either refund the security deposit or file an Application for Dispute Resolution in order to comply with section 38(1). I find the landlord has violated section 38(1) and must now pay the tenants double the security deposit.

As the tenants were successful in this application, the tenants are awarded the filing fee paid for making this application. I calculate that the landlord is obligated to pay the tenants the following amount:

Double security deposit (\$650.00 x 2)	\$ 1,300.00
Filing fee	<u>50.00</u>
Monetary Order for tenant	\$ 1,350.00

The tenants must serve the enclosed Monetary Order upon the landlord and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The tenants were successful in this application and have been provided a Monetary Order in the amount of \$1,350.00 to serve upon the landlord and enforce as necessary.

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: May 30, 2012.

Residential Tenancy Branch