



Dispute Resolution Services

Page: 1

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 tenants' application for a Monetary Order for double the security deposit and to recover the filing fee from the landlords for the cost of this application.

One of the tenants and the 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

Are the tenants entitled to recover double the security deposit?

Background and Evidence

Both parties agree that this tenancy started on January 01, 2012 when a new three month fixed term tenancy agreement was entered into with the tenants and the landlords. Rent for this unit was \$1,300.00 per month and was due on the first day of each month in advance. The tenants paid a security deposit of \$650.00 on March 06, 2009 when the unit was originally rented. Both parties acknowledge that they attended a move in and a move out condition inspection of the rental unit and acknowledge that the tenants gave the landlord their forwarding address on April 23, 2012.

The tenant attending testifies that the landlords have failed to return all their security deposit within 15 days of receiving the tenants forwarding address in writing. The tenant testifies that the landlords have withheld \$267.99 of their security deposit and returned the sum of \$382.01 on or about April 14, 2012. The tenant states that they have not given the landlord permission to keep all or part of their security deposit therefore they seek to recover double the deposit.

The landlords testify that they issued a cheque for the sum of \$382.01 on April 11, 2012 and gave this personally to the tenants on this day. The landlords testify that at the time they were not aware that they had to file an application to keep all or part of the security deposit and withheld the balance of the deposit for damages to the rental unit. The landlords testify that the tenants had filed their application before they had given the landlord their forwarding address.

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 then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above, the evidence presented and the landlords testimony I find that the landlords did receive the tenants forwarding address in writing on April 23, 2012. As a result, the landlords had until May 08, 2012 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlords retained the sum of \$267.99 from the security deposit and have not filed an application for Dispute Resolution to keep this part of the deposit. Therefore, I find that the tenants have

established a claim for the return of double the security deposit pursuant to section 38(6)(b) of the *Act*. I have deducted the amount all ready returned to the tenants from the tenants' monetary award:

I also find the tenants are entitled to recover the **\$50.00** filing fee from the landlords pursuant to section 72(1) of the *Act*. The tenants have been issued with a Monetary Order as follows:

Double the security deposit	\$1,300.00
Less amount all ready returned	(-\$382.01)
Filing fee	\$50.00
Total amount due to the tenant	\$967.99

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 **\$967.99**. The order must be served on the respondents 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: June 14, 2012.

Residential Tenancy Branch