



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenants provided undisputed evidence that they issued their notice to end this tenancy by May 1, 2012 to the landlord by telephone and by email on or about April 6, 2012. The landlord confirmed that she received a copy of the tenants' dispute resolution hearing package by registered mail on or about June 6, 2012. I am satisfied that the landlord received both of these notices from the tenants.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for the return of their security deposit? Are the tenants entitled to a monetary award equivalent to the amount of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*? Are the tenants entitled to recover the filing fee for their application from the landlord?

Background and Evidence

This tenancy commenced on September 1, 2010 as a one-year fixed term tenancy. At the expiration of the initial term, this converted to a periodic tenancy. Monthly rent by the end of the tenancy was set at \$1,450.00, payable in advance on the first of each month.

The landlord continues to hold what she described as the tenants' last month's rental payment she requested and received at the commencement of this tenancy. Although she did not characterize this payment as a "security deposit", I advised the parties that I

found that the tenants' payment of their last month's rent at the beginning of their tenancy was a security deposit retained by the landlord. I also noted that the *Act* prevents a landlord from charging any amount in excess of one-half month's rent as a security deposit, an amount exceeded by the landlord in this case.

The tenants applied for a monetary award of \$2,978.19. This amount included a claim for double their security deposit due to the landlord's failure to return their security deposit to them in accordance with section 38 of the *Act*. Their application also requested the recovery of their \$50.00 filing fee and a one month internet charge of \$28.19.

The landlord confirmed that she had not returned the tenants' security deposit, nor had she filed for dispute resolution to obtain authorization to retain their security deposit. She also confirmed that she had not yet applied for a monetary award for damage and losses she incurred after the tenants ended their tenancy.

Analysis

Pursuant to section 63 of the *Act*, the dispute resolution officer may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following terms of their settlement agreement:

1. Both parties agreed that all monetary issues arising out of this tenancy will be resolved by the landlord's agreement to pay the tenants a negotiable cheque for \$1,050.00 by August 15, 2012.
2. Both parties agreed that this settlement agreement constituted a final and binding resolution of all issues arising out of this tenancy.
3. Both parties agreed that they would not initiate any further applications for dispute resolution arising out of this tenancy.

Conclusion

In order to implement the above settlement reached between the parties, I issue a monetary Order in the tenants' favour in the amount of \$1,050.00. I deliver this Order to the tenants in support of the above agreement for use **only** in the event that the landlord does not abide by the terms of the above settlement. The tenants are provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible after a failure to comply with the terms of the above

settlement agreement. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: July 30, 2012

Residential Tenancy Branch