



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Preliminary Issues

At the outset of the hearing the Landlord argued that service of the Tenant's application for dispute resolution, the hearing documents, and the evidence was not completed until July 24, 2012, which is past the three day service required. He submitted that although he received the documents July 24th, (sixteen days prior to today's hearing) he has not been able to compile and submit his evidence because he has been out of town.

I asked the Landlord what evidence he needed to gather and submit in response to the Tenant's claim to which he replied: "I would submit photos of the rental unit to prove the damages, the amount of cleaning required and receipts". I explained to the Landlord that that type of evidence would pertain to a claim relating to damages or losses he may have suffered; however, today's hearing was to hear matters only relating to how he disbursed the security deposit.

The Landlord confirmed that he did not have any other evidence, in addition to the Tenant's evidence, to submit in relation to the disbursement of the security deposit. In light of the aforementioned, I informed the Landlord that I would not be granting an adjournment and we would be proceeding with today's hearing, which was in accordance with # 6.6 of the *Residential Tenancy Branch Rules of Procedure*.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to obtain a Monetary Order for the return of their security deposit 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. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. 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. Are the Tenants entitled to a Monetary Order?

Background and Evidence

The parties agreed they entered into a fixed term tenancy agreement that began on September 15, 2011 and switched to a month to month tenancy after six months. Rent was payable on the 15th of each month in the amount of \$1,600.00 and on September 15, 2011 the Tenants paid \$800.00 as the security deposit. No condition inspection was completed at move in however there was a condition inspection completed at move out on May 15, 2012 which both parties attended and signed the condition inspection form. The Tenants provided their forwarding address during the move out inspection which was recorded on the move out condition form.

The Tenants submitted evidence which included copies of: the move out condition form, a damage detail report issued by the Landlord May 23, 2012, transcription of text messages, and Canada Post receipts.

The Tenants stated that they had been out of the unit by May 14, 2012 and attended the move out inspection on May 15, 2012. They signed the move out condition report agreeing to a \$150.00 deduction from their security deposit for the damage caused to the counter top as well as the cost of a bulb cover which the Landlord was to purchase and give them a copy of the receipt. They advised that they received the May 23, 2012 statement from the Landlord with a cheque for \$120.00. The Tenants confirmed they have not cashed the \$120.00 cheque.

The Tenants argued that the Landlord agreed to return \$630.00 of their security deposit within two days and they did not agree to have the Landlord keep \$680.00 from their \$800.00 deposit. Therefore they are seeking to recover double their deposit in the amount of \$1,430.00 (\$800.00 + \$630.00 owed).

The Landlord argued that the Tenants still had possession of the unit on May 15, 2012 and confirmed he withheld \$680.00 from the security deposit even though the Tenants signed the move out condition report agreeing for him to keep only \$150.00 for the

counters plus the cost of the light cover. The Landlord stated that he provided the Tenants with the receipt for \$20.00 for the light fixture when he mailed them the cheque.

The Landlord confirmed that he has not made an application for dispute resolution, he only had the Tenants' written permission to keep \$150.00 + cost of light cover, and he does not possess an Order to allow him to keep the remaining \$510.00.

Analysis

I have carefully considered the aforementioned and the documentary evidence before me. 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*.

The evidence supports that the tenancy ended May 15, 2012 and the Tenants provided the Landlord with their forwarding address on May 15, 2012. The parties agreed, in writing, that the Landlord would withhold \$150.00 plus the cost of the bulb cover from the deposit.

The Tenants argued that they did not receive a copy of the bulb receipt, and in the absence of evidence from the Landlord to prove the actual cost of this bulb cover, I find there is insufficient evidence to prove the actual cost of the light cover. Accordingly, I find the Landlord only had written permission to withhold \$150.00 reducing the security deposit amount to be disbursed in accordance with the *Act* to **\$650.00**. (\$800.00 - \$150.00).

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 deposit of \$650.00 or file for dispute resolution no later than May 30, 2012. The Landlord did not file an application for dispute resolution and he returned only \$120.00, which is currently being held by the Tenants.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that 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 Tenants double the security deposit.

Based on the forgoing I find that the Tenants have met the burden of proof and I award them the return of double their security deposit in the amount of **\$1,300.00** (2 x \$650.00).

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

Monetary Order – I find that the Tenants are entitled to a monetary claim as follows:

Double Security Deposit 2 x \$650.00	\$1,300.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,350.00
LESS: Payment received	<u>- 120.00</u>
Amount due to the TENANTS	<u>\$1,230.00</u>

The Tenants are at liberty to cash the \$120.00 payment previously received by the Landlord.

Conclusion

The Tenants have been awarded a Monetary Order in the amount of **\$1,230.00**. 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: August 14, 2012.

Residential Tenancy Branch