



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 Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by both tenants; the landlord and his witness/agent. The landlord did have additional people in attendance but they were out of the room during the hearing and were not called to testify.

At the outset of the hearing I advised both parties that the hearing was based solely on the tenants' Application for return of the security deposit and not to determine the condition of the rental unit at the end of the tenancy. I advised the decision would be based on whether or not the landlords had complied with their obligations regarding the disposition of the security deposit.

The parties provided substantial testimony on conditions of the rental unit at the start and end of the tenancy as well as testimony regarding the relationship between the parties and repairs and renovations during the tenancy. This decision documents only testimony and evidence relevant to the matters in the tenants' Application.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenancy began on October 1, 2007 as a month to month tenancy for a monthly rent, at the end of the tenancy, of \$1,150.00 including hydro due on the 1st of each month with a security deposit of \$500.00 paid. The parties also agree the tenancy ended by May 31, 2012.

The tenants testified they provided their forwarding address to the landlord's son on May 29, 2012 because the landlords were out of town at the time the tenancy was scheduled to end. The landlord's witness/agent testified that he received the forwarding address from the tenants sometime towards the end of May 2012 but definitely in May.

The landlord also confirmed that they have not filed an Application for Dispute Resolution claiming for damages to the rental unit or to retain the security deposit.

Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

From the testimony of both parties, the tenancy ended on May 31, 2012 and the landlord had received the tenant's forwarding address prior to May 31, 2012 and as such I find the latest the landlord should have return the deposit to the tenants or filed an Application for Dispute Resolution to claim against the security deposit no later than June 15, 2012.

As the landlord has failed to do either I find the landlord has failed to comply with Section 38(1) and the tenants are entitled to double the security deposit in accordance with Section 38(6).

I note that this decision does not impact the landlord's ability to submit an Application for Dispute Resolution, in accordance with the *Act*, to claim for any damage to the rental unit.

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,050.00** comprised of \$1,000.00 double the amount of the security deposit and the \$50.00 fee paid by the tenants for this application.

This order must be served on the landlords. If the landlords fail to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced 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: August 30, 2012.

Residential Tenancy Branch