



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 pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to obtain a return of double their security deposit pursuant to section 38; and
- authorization to recover their filing fee for this application from the landlords 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 ask questions of one another. The male landlord (the landlord) confirmed that both landlords received a copy of the tenants' dispute resolution hearing package sent by the tenants to both landlords by registered mail on July 27, 2012. I am satisfied that the tenants served these packages to the landlords in accordance with the *Act*.

At the hearing, the male tenant (the tenant) testified that they attached a copy of the tenants' written evidence to the landlords with their dispute resolution hearing package. The landlord confirmed that he had received this evidence package. I noted that I had not received a copy of this evidence package, but agreed to hear sworn testimony of the parties about the issue before me.

The landlord said that he was expecting a witness to call in to give testimony on his behalf. However, a witness did not join the teleconference hearing. The landlord stated that the witness would be providing testimony regarding alleged damage that arose as a result of this tenancy. I advised the parties that no application from the landlords for a monetary award for damage was before me so this testimony would be of little value.

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 landlords' failure to comply with the provisions of section 38 of the *Act*? Are the tenants entitled to recover the filing fee for this application from the landlords?

Background and Evidence

This tenancy began as a one-year fixed term tenancy on September 1, 2010. At the expiration of the original term, the tenancy continued as a periodic tenancy. Monthly rent by the time the tenants vacated their rental unit on June 30, 2012 was set at \$1,350.00, payable in advance on the first of each month. The tenants paid a \$650.00 security deposit on September 2, 2010.

The parties agreed that the landlords sent the tenants a \$244.26 cheque on July 21, 2012, returning that portion of the tenants' security deposit. The tenant testified that the tenants received that cheque on July 28, 2012, and cashed it shortly thereafter.

The parties agreed that the tenants provided the landlords with their forwarding address on July 1, 2012. The landlord confirmed that the landlords have not applied for dispute resolution to seek authorization to retain any portion of the tenants' security deposit. He also confirmed that within 15 days of receiving the tenants' forwarding address, the landlords did not return any portion of the tenants' security deposit. He testified that he does not have the tenants' written consent to retain any portion of the security deposit. He said that he had been waiting to return the security deposit until the tenants returned to the premises to repair damage they caused during this tenancy.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, there is undisputed evidence that the landlords received the tenants' forwarding address on July 1, 2012. Therefore the landlord's obligations commenced on that date. I find that the landlords have not returned the security deposit within 15 days of receipt of the tenants' forwarding address. I find that the landlords have not applied for dispute resolution for authorization to retain any portion of the tenants' security deposit within 15 days of receiving the tenants' forwarding address. The

landlords did not obtain the tenants' written authorization to retain any portion of the security deposit. Under these circumstances, I find that the tenants are entitled to a monetary award of \$1,300.00, amounting to double the security deposit with interest calculated on the original amount only. No interest is payable over this period. As the landlords have returned \$244.26 of the tenants' security deposit, I reduce the tenants' monetary award by that amount.

Having been successful in this application, I find further that the tenants are entitled recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary Order in the tenants' favour under the following terms which allows the tenants to obtain a return of the remaining portion of their security deposit retained by the landlords, a monetary award equivalent to their original security deposit due to the landlords' failure to comply with the provisions of s. 38 of the *Act*, and to obtain the recovery of their filing fee:

Item	Amount
Return of Remaining Portion of Tenants' Security Deposit (\$650.00 - \$244.26 = \$405.74)	\$405.74
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	650.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$1,105.74

The tenants are provided with these Orders in the above terms and the landlord(s) must be served with a copy of these Orders as soon as possible. Should the landlord(s) 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: October 04, 2012

Residential Tenancy Branch