



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlords: MNR FF

For the tenants: MNDC MNSD FF

Introduction

This hearing was a result of the cross-applications by the parties under the *Residential Tenancy Act* (the “Act”).

The landlords have applied for a monetary order for unpaid rent or utilities, and to recover the filing fee.

The tenants have applied for a monetary order for the return of double their original security deposit, for money owed or compensation under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

The tenants, a witness for the tenants, and the landlords attended the hearing. The parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions during the hearing.

The parties agree that they received the evidence of the other party and had the opportunity to review it prior to the hearing. I find the parties were served in accordance with the *Act*. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing.

Preliminary Matter

The tenants provided a witness who spoke about the cleanliness of the rental unit, however, the issue of cleanliness was not relevant to the tenants’ application for double the return of their security deposit, or to the landlords’ application for unpaid rent, and has not been referenced in this Decision as a result.

Issues to be Decided

- Did the landlords comply with section 38 of the *Act* regarding the security deposit?
- Is either party entitled to a monetary order under the *Act*?

Background and Evidence

The parties agree that the tenancy began on February 1, 2012. Rent in the amount of \$2,000.00 was due on the first day of each month; however, as the tenants did not have full use of the rental unit, the parties agree that the landlords reduced the rent for the months of March, April and May 2012. The parties dispute the amount of rent for June 2012. The landlords testified that rent returned to the original amount of \$2,000.00 in June 2012. The tenants disputed that rent had returned to \$2,000.00 for June 2012. A security deposit of \$1,000.00 was paid by the tenants at the start of the tenancy.

The tenants provided notice to the landlords on May 26, 2012 that they would be vacating the rental unit on June 30, 2012. The tenants vacated the rental unit on June 8, 2012. The landlords stated they received a letter from the tenants with the keys to the rental unit on or about June 14, 2012. The tenants provided their written forwarding address to the landlords in the letter received on June 14, 2012. The landlords applied for dispute resolution for unpaid rent on July 17, 2012 after several attempts to contact the tenants.

The landlords confirmed that they continue to hold the tenants security deposit of \$1,000.00. The tenants are claiming \$2,000.00 consisting of double their original security deposit.

The landlords submitted their application on July 17, 2012, however, did not claim against the security deposit. The landlords are claiming \$2,000.00 for unpaid rent for June 2012. The tenants confirmed they did not pay rent for June 2012, however, they did offer to pay the landlords \$1,000.00 cash and offset the June 2012 rent by permitting the landlords to keep their \$1,000.00 security deposit. There was no evidence provided that the landlords accepted the tenants offer. The tenants have applied for return of double their security deposit in the amount of \$2,000.00

Analysis

Based on the above and the evidence provided during the hearing, and on a balance of probabilities, I find the following.

Tenants' claim for return of double the security deposit – The tenants provided their forwarding address which was received by the landlords on June 14, 2012. The parties agree that the tenants provided notice that they would be vacating the rental unit on June 30, 2012. Even though the tenants state they vacated the rental unit on June 8, 2012, based on their notice, they had use of the rental unit up until June 30, 2012. Therefore, **I find** the tenancy ended on June 30, 2012. The landlords applied for dispute resolution on July 17, 2012 for unpaid rent for the month of June 2012.

Section 38 of the *Act* states:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

[emphasis added]

The tenancy end date of June 30, 2012 is later than the date the landlords received the tenants forwarding address, which was June 14, 2012. Given the above, **I find** that the landlords breached section 38 of the *Act* by failing to repay the full security deposit

within **15 days** of the end of tenancy date on June 30, 2012. The landlords did not file their claim until July 17, 2012 which is two days after the deadline to repay the security deposit. The landlords claim did not include a claim towards the security deposit.

Therefore, **I find** the tenants are entitled to the return of **double their original security deposit** as follows:

Original amount of security deposit	\$1,000.00
Double original security deposit due to landlord non compliance with Section 38 of the <i>Act</i>	\$1,000.00
Interest on original security deposit	\$0.00
TOTAL	\$2,000.00

I caution the landlords that a security deposit is held in trust for the tenants by the landlords. At no time do the landlords have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. The landlords may only keep all or a portion of the security deposit through the authority of the *Act*, such as an order from a Dispute Resolution Officer, or the written agreement of the tenants. In the matter before me, the landlords did not have any authority under the *Act* to keep any portion of the security deposit, and were provided the written forwarding address by the tenants.

Landlords' claim for unpaid rent for June 2012 – The tenants confirmed that they did not pay rent for the month of June 2012. The tenants dispute the amount of rent owing for June 2012. During the hearing, however, a tenant testified that the landlords were offered the ability to retain their \$1,000.00 security deposit and would pay them an additional \$1,000.00 to cover the rent for June 2012. Given the testimony from the tenants, **I find** that rent owing for June 2012 is \$2,000.00, based on the balance of probabilities. Section 26 of the *Act* requires that the tenants must pay rent when it is due under the tenancy agreement, whether or not the landlords have complied with the *Act*. Therefore, **I find** the tenants breached section 26 of the *Act* by failing to pay rent for the month of June 2012. **I find** the landlords have established a monetary claim of **\$2,000.00** consisting of rent owed for the month of June 2012.

As both parties have established a total monetary claim of \$2,000.00, **I do not** grant either party a monetary order as the amounts offset each other.

As the applications of both parties had merit, I grant both parties the recovery of the \$50.00 filing fee. I **do not** grant either party a monetary order as the amounts offset each other.

Conclusion

I find the tenants are entitled to compensation in the amount of \$2,000.00 consisting of double their original security deposit.

I find the landlords are entitled to compensation in the amount of \$2,000.00 consisting of unpaid rent for June 2012.

I do not grant the parties a monetary order, however, as the amounts offset each other.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 10, 2012

Residential Tenancy Branch