



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the tenants' application to recover double the security deposit; and to recover the filing fee from the landlords for the cost of this application. At the outset of the hearing the tenant attending withdrew their application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement.

One of the tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

The landlord testifies that the other party named on the application was a person acting on behalf of the landlord and is not party to this proceeding. Therefore the second respondents name will not be included on any Orders.

Issue(s) to be Decided

- Are the tenants' entitled to recover double the security deposit?

Background and Evidence

The parties agree that this was a fixed term tenancy for six months starting on April 01, 2011. At the end of the fixed term the parties entered into a new fixed term tenancy from October 01, 2011 to September 30, 2012. The tenants' vacated the rental unit on that

date. Rent for this unit was \$1,300.00 per month which included heat and electricity up to \$200.00 per month. After this amount was exceeded the tenants were required to pay 75 percent of any additional charges. Rent was due on the first of each month. The tenants paid \$650.00 for a security deposit on March 26, 2011.

The tenant testifies that they attended a move in inspection with the landlord at the start of the tenancy however at the end of the tenancy only a walk through with the landlord took place and the landlord did not complete an inspection report. The tenant testifies they gave the landlord a forwarding address on September 30, 2012 and the landlord has not returned their security deposit. The tenant testifies they therefore seek to recover double the security deposit to the sum of \$1,300.00.

The landlord testifies that she did not know at the time that she only had 15 days to deal with the security deposit and did not understand that she was required to file an application to keep the security deposit for unpaid utilities.

The landlord requested that I consider her claim for unpaid utilities against the tenants. However, in the absence of a formal and proper application for that issue, I declined to hear or determine that issue, as to do so, in my view, would not be in keeping with the principles of natural justice as to the requisite process and notice regarding claims in this process. The landlord is at liberty to file an application for unpaid utilities to have that matter determined at another hearing.

Analysis

The *Residential Tenancy Act* s. 38(1) states that, if the landlord does not either return the security deposit or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

The landlord has not returned the tenants security deposit or applied for dispute resolution to keep any or all of the tenant's security deposit and the time limit in which to apply is now past.

This tenancy ended on September 30, 2012 and the landlord had a forwarding address in writing on that date and there is no evidence to show that the tenant's right to return of the deposit has been extinguished.

Therefore, I find the tenants have established a claim for double the security deposit to the sum of **\$1,300.00** pursuant to s. 38(6)(b) of the *Act*.

As the tenants have been successful with their claim I find the tenants are also entitled to recover the **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,350.00**. The order must be served on the respondent and is enforceable through the Provincial Court 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: November 21, 2012.

Residential Tenancy Branch