



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the tenants for an order for the return of their security deposit. Both parties participated in the conference call hearing.

Issue to be Decided

Are the tenants entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on February 14, 2012 at which time the tenants paid a total of \$1,075.00 in security and pet deposits and that the tenancy ended on February 1, 2013 at which time the tenants provided their forwarding address in writing. The parties further agreed that on February 15, the landlords returned to the tenants \$775.00.

The landlords provided a copy of the condition inspection report on which damage was noted and which the tenants had signed. The landlords argued that the tenants' signature on the form indicated agreement. The tenants acknowledged that there was damage to the rental unit, but claimed that it did not result from their actions or negligence, but from the landlords' failure to perform adequate repairs. They stated that they did not intend that their signature on the report should grant permission to retain part of the security deposit. The tenants provided a copy of an email dated February 13, 2013 in which they told the landlords that they understood that the landlords intended to retain part of the deposit and that they disagreed with this retention.

Analysis

The condition inspection report is indeed signed by the parties and indicates damage to the rental unit. However, the form has a number of areas on which tenants can sign, including a space which specifically states, "I agree to the following deductions from my security and/or pet damage deposit". The tenants did not sign in this space; rather, they placed their signatures at the end of the document in an area which merely indicates their participation in the inspection. I find that the tenants did not give the landlords written permission to retain any amount from the security deposit.

When tenants have both vacated a rental unit and provided their forwarding address in writing, section 38 of the Act requires landlords to either return deposits in full or file an application for dispute resolution to retain monies from the deposits. If landlords fail to act within 15 days, section 38(6) requires that landlords pay the tenants double the amount of the deposit.

Although the tenants did not file a claim for double the deposit, Residential Tenancy Branch Policy Guideline #17 specifically states that unless tenants have specifically waived the doubling of the deposit, an Arbitrator must award double.

I recognize that the landlords believed that they have a legitimate claim on the amount retained and that they retained that amount with no malicious intent. However, the law is clear on the issue of the tenants' entitlement. The landlords are free to file a claim for a monetary order for any amount they believe they are owed.

The landlords currently hold a \$300.00 security deposit. Pursuant to the aforementioned Policy Guideline, I award the tenants \$600.00 which represents double that amount. I find that as the tenants have been successful in their claim they are also entitled to recover the \$50.00 filing fee paid to bring their application for a total entitlement of \$650.00.

Conclusion

I grant the tenants a monetary order under section 67 for \$650.00. This order may be filed in the Small Claims Division of the Provincial Court and 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: May 01, 2013

Residential Tenancy Branch

