



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 as a result of the tenants' application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "*Act*"). The tenants applied for the return of double their security deposit, plus their filing fee.

The tenants and the landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties presented their evidence. A summary of their testimony is provided below and includes only that which is relevant to the hearing.

During the hearing, the parties confirmed that they received the evidence from the other party prior to the hearing and that they had the opportunity to review the evidence. I find the parties were served with evidence in accordance with the *Act*.

Issue to be Decided

- Are the tenants entitled to the return of double their security deposit under the *Act*?

Background and Evidence

A fixed term tenancy began on June 1, 2012 was to end on June 1, 2013, however, the tenants vacated the rental unit early on May 1, 2013, and the landlord was able to find a new tenant who moved into the rental unit within a couple of days of the tenants vacating the rental unit.

Monthly rent in the amount of \$1,295.00 was due on the first day of each month. A security deposit of \$650.00 was requested by the landlord and paid by the tenants at the start of the tenancy, which is more than half of the monthly rent permitted by the *Act*, and will be addressed later in this decision.

The tenancy ended on May 1, 2013 when the tenants vacated the rental unit. The landlord stated that she did not suffer a loss of rent for May 2013 as she found a new tenant who moved into the rental unit a couple of days after the tenants vacated the rental unit.

The parties confirmed that the usual method of correspondence between them was by e-mail. The landlord confirmed that she received the written forwarding address of the tenants by e-mail on April 19, 2013. A copy of the April 19, 2013 e-mail was submitted in evidence. The landlord stated that she did not return the tenant's security deposit or file an application to retain the tenants' security deposit under the *Act*, and continues to hold the security deposit of the tenants. The parties confirmed that the tenants did not sign over any portion of the security deposit to the landlord.

Both parties confirmed that a move-in condition inspection was completed at the start of the tenancy, however, the landlord confirmed that a move-out condition inspection report was not completed as she was out of the country at the time. The landlord did not have an agent complete a move-out condition inspection report in her absence.

The tenants filed their application on May 14, 2013, seeking the return of double their security deposit under the *Act*.

I have reviewed all documentary evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Analysis

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

Amount of security deposit – The landlord requested and accepted a \$650.00 at the start of the tenancy. Monthly rent was \$1,295 per month. Section 19 of the *Act* states:

19 (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.

(2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

Based on the above, **I find** the maximum security deposit that the landlord could request under the *Act* was \$647.50. As the landlord exceeded that amount by \$2.50, **I caution** the landlord to comply with section 19 of the *Act* in the future.

Tenants' claim for the return of double the security deposit and pet damage deposit – I accept that the tenancy ended on May 1, 2013, when the tenants vacated the rental unit. Section 38 of the *Act* applies which 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]

In the matter before me, the landlord confirmed that she did not submit an application claiming towards the tenants' security deposit. Furthermore, the landlord did not have permission from the tenants to deduct any amount from their security deposit. Given the above, under section 38 of the *Act*, the landlord had to return the full security deposit to the tenants or file an application to claim towards the security deposit within 15 days of receiving the tenants' forwarding address in writing. Although e-mails and texts do not have a service provision under the *Act*, the landlord did confirm that e-mail was the regular way of communication between the parties, and that she received the tenants' written forwarding address on April 19, 2013 by e-mail.

Based on the above, **I find** the landlord breached section 38 of the *Act* by failing to return the security deposit in full to the tenants within 15 days of receiving the forwarding address of the tenants in writing on April 19, 2013, having not made a claim towards the security deposit. Therefore, **I find** the tenants are entitled to the return of double their original security deposit of \$650.00 for a total of **\$1,300.00**. I note that the security deposit has accrued \$0.00 in interest since the start of the tenancy.

As the tenants were successful with their application, **I grant** the tenants the recovery of their filing fee in the amount of **\$50.00**.

Monetary Order – I find that the tenants have established a total monetary claim in the amount of **\$1,350.00**, comprised of \$1,300.00 for double their original security deposit, plus the \$50.00 filing fee. **I grant** the tenants a monetary order pursuant to section 67 of the *Act* in the amount of **\$1,350.00**. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I grant the tenants a monetary order under section 67 in the amount of \$1,350. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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: August 26, 2013

Residential Tenancy Branch

