



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the tenants' application for a Monetary Order to recover double the security deposit; and to recover the filing fee from the landlord for the cost of this application.

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

Issue(s) to be Decided

Are the tenants entitled to a Monetary Order to recover double the security deposit?

Background and Evidence

The parties agree that this tenancy started on December 01, 2012 for a fixed term tenancy for six months. The tenancy ended on May 31, 2013. Rent for this unit was \$950.00 per month and was due on the first day of each month in advance. The tenants paid a security deposit of \$475.00 on November 16, 2012. The parties also agree that the landlord did not do an inspection report at the start and end of the tenancy. The tenants gave the landlord their forwarding address in writing on June 03, 2013.

The tenants testify that the landlord has failed to return their security deposit within 15 days of receiving their forwarding address in writing. The tenants therefore seek to recover double the security deposit from the landlord to an amount of \$950.00. The tenants agree that they did receive a cheque from the landlord dated July 08, 2013 for \$325.00. The tenants testify that the landlord has made unauthorised deductions from the security deposit.

The landlord testifies that deductions were made from the security deposit for damages to the unit. The tenants left holes in a wall and there was damage to a light fixture.

Analysis

Section 38(1) of the *Residential Tenancy Act (Act)* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Sections 23(4), 35(3) of the *Act* require a landlord to complete a condition inspection report at the beginning and end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign the condition inspection report. In failing to complete the condition inspection reports when the tenants moved in and out, I find the landlord contravened s. 23(4) and s. 35(3) of the *Act*. Consequently, s. 24(2)(a) and s. 36(2)(a) of the *Act* says that the landlord's right to claim against the security deposit for damages is extinguished.

When a landlords right to claim against the security deposit has been extinguished a landlord is not entitled to file a claim to keep the security deposit and if the deposit has not been returned to the tenants within 15 days of either the end of the tenancy or the

date the tenants give the landlord their forwarding address in writing the landlord must pay double the security deposit to the tenants.

Therefore, based on the above and the evidence presented I find that the landlord did receive the tenants' forwarding address in writing on June 03, 2013. As a result, the landlord had until June 18, 2013 to return the tenants' security deposit. As the landlord failed to do so, the tenants have established a claim for the return of double the security deposit to an amount of **\$950.00**, pursuant to section 38(6)(b) of the *Act*. There has been no accrued interest on the security deposit for the term of the tenancy.

As the landlord has returned the sum of **\$325.00** this amount has been deducted from the tenants monetary award

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 **\$675.00**. 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: October 29, 2013

Residential Tenancy Branch

