



Dispute Resolution Services

Page: 1

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, the landlord and the landlord's agent attended the conference call hearing and gave sworn testimony. The landlord 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 September 30, 2006 for a fixed term tenancy for two years. The tenancy ended on July 15, 2013. Rent for this unit was \$1,150.00 per month rising to \$1,200.00 by the end of the tenancy. Rent was due on the first day of each month in advance. The tenants paid a security deposit of \$1,150.00 on September 30, 2006. 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 July 15, 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 \$2,300.00. The tenants testify that they have not authorised the landlord to make any deductions from the security deposit. The tenants' testify that the landlord's father who acts as the landlord's agent said they would pay back the security deposit however the tenants waited for two months but nothing came from the landlord. They contacted the landlord again and requested the security deposit however the landlord told the tenants that they would not get any of the deposit back due to repairs and cleaning required in the unit.

The tenants testify that they had cleaned the unit at the end of the tenancy including all appliances. The tenants testify that they left the keys and letter with their forwarding address at the unit on the day they vacated.

The landlord testifies that the security deposit was withheld for repairs and cleaning of the unit, the landlord testifies that he did not get a forwarding address until September, 2013. The landlord's agent testifies that the tenants did leave the keys and a piece of paper with their forwarding address on it. The landlord's agent testifies that he did not remember the address or what happened to the piece of paper.

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 landlord's 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 July 15, 2013. As a result, the landlord had until July 30, 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 **\$2,300.00**, pursuant to section 38(6)(b) of the *Act*. The tenants are also entitled to recover accrued interest on the security deposit to an amount of **\$36.30**.

The tenants are also entitled to recover the **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*.

I would caution the landlord for future tenancies that the *Residential Tenancy Act* s. 19 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.*

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 **\$2,386.30**. 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

