



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

The tenant applies to recover a \$350.00 security deposit. Shortly after making the application the landlords paid her the deposit less \$40.00 they claim the tenant agreed to pay for repair of a wall.

Issue(s) to be Decided

Were the landlords entitled to retain the \$40.00. Is the tenant entitled to invoke the doubling penalty imposed by s.38 of the *Residential Tenancy Act* (the "Act")?

Background and Evidence

The rental unit is a two bedroom suite in a five-plex building. The tenancy started in mid-August 2013 and ended by agreement on August 31, 2013. The rent was \$700.00 per month and the landlords received a \$350.00 security deposit. The tenant had provided her forwarding address in writing on August 31st. The tenant made this application on September 16, 2013. On the same day, I assume later in the day, the landlords paid the tenant \$310.00 of the deposit.

Analysis

Section 38 of the *Act* provides that once a tenancy has ended and once the landlord has received the tenant's forwarding address in writing, the landlord must either repay the deposit within 15 days or make application to keep it. A landlord who fails to do so suffers a doubling of the deposit. A landlord may deduct from deposit any outstanding monetary award or any amount the tenant authorizes in writing.

In this case the landlords failed to meet those requirements. They have not applied for a monetary award against the tenant. They do not have the tenant's written authority to retain any of the deposit.

While, in my view, the landlords' claim of \$40.00 to repair the hole in the wall is a not unreasonable charge, that claim is not before me at this proceeding. In order to lawfully collect that amount the landlords must make their own application for dispute resolution.

On the evidence, the tenant is entitled to a doubling of the security deposit under s. 38.

The tenant did not request a doubling in her application. The Residential Tenancy Policy Guideline 17 "Security Deposit and Set off [*sic*]" provides that in such a circumstance I am to award the doubling unless the tenant specifically declines it. The question was put to her at the hearing and the tenant did not decline the doubling.

I find that the tenant is entitled to a monetary award of \$700.00, being double the security deposit, less \$310.00 received.

Conclusion

The tenant will have a monetary order against the landlords jointly and severally in the amount of \$390.00.

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 15, 2013

Residential Tenancy Branch

