



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an application by the tenants for return of double the security deposit. Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail actually received on September 23 and September 24 respectively, the landlords did not appear.

Issue(s) to be Decided

Are the tenants entitled to a monetary order and, if so, in what amount?

Background and Evidence

This tenancy commenced November 1, 2011 as a six-month fixed term tenancy and continued thereafter as a month-to-month tenancy. The monthly rent of \$850.00 was due on the first day of the month. The tenants paid a security deposit of \$425.00. There was a move-in inspection conducted but a move-in condition inspection report was not completed.

The tenancy ended on August 26, 2013. A move-in inspection was conducted at that time. The tenant testified that the landlord pointed out some damages. The parties agreed that the landlords would deduct \$125.00 from the security deposit for the damages and the landlord gave the tenants a cheque for \$325.00.

A few hours later the male landlord sent the male tenant a text message stating that there were more damages than he had anticipated and asked the tenant for some additional payment. The parties agreed on \$40.00 cash, which the male tenant delivered that evening.

The next day the male landlord again contacted the male tenant saying that there was still more damage than he had anticipated. He asked the tenant to return the \$325.00 cheque.

On August 31 the tenants returned the \$325.00 cheque to the landlords together with a letter that provided their forwarding address.

Since then the tenants have neither been served with an application for dispute resolution by the landlords claiming against the security deposit nor have they received any refund of the security deposit or the additional \$40.00 cash they paid the landlords.

Analysis

Section 38(1) of the *Residential Tenancy Act* provides that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit to the tenant or file an application for dispute resolution claiming against the deposit. In the present case, the landlords have done neither.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not allow any flexibility on this issue. Accordingly, I find that the tenants are entitled to an order that the landlords pay them the sum of \$850.00, representing double the security deposit.

In addition, I find that payment of the \$40.00 cash to the landlords was contingent on the payment being accepted in full and final settlement of any claims the landlords may have against the tenants. The landlords withdrew that offer when they subsequently asserted further claims against the tenants. As a result they have no right to hold those funds and I order that they repay the \$40.00 to the tenants.

Finally, I order that as the tenants were successful on their application they are entitled to reimbursement from the landlord of the \$50.00 fee they paid to file it.

Conclusion

I find that the tenants have established a total monetary claim of \$940.00 comprised of payment of double the security deposit in the amount of \$850.00, return of the additional \$40.00 payment made by the tenants, and the \$50.00 fee paid by the tenants for this application and I grant the tenants a monetary order in this amount. If necessary, this order may be filed in Small Claims Court and enforced as an order of that court.

This order does not prevent the landlords from filing a separate application for dispute resolution against the tenants for a monetary order for any damages or cleaning costs that may be proven at that hearing.

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: December 02, 2013

Residential Tenancy Branch

