



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

The tenants apply for the return of the tenants' security deposit.

The landlord did not attend the hearing. I accept that the landlord was properly served with the tenants' application by way of registered mail, mailed to the landlord's address as indicated in the tenancy agreement. I also note that after the application was mailed to the landlord, he contacted the tenants, suggesting he had received the tenants' claim and notice of the hearing.

Issue(s) to be Decided

In most situations, section 38(1) of the Act requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address, to either return the deposit or file an application to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the security deposit (section 38(6)). The issue in this case is whether the tenants are entitled to the return of the deposit, and whether the doubling provisions apply.

Background and Evidence

This tenancy began January 15, 2013 and ended on April 24, 2013. The tenants paid a security deposit of \$900.00 which was cashed by the landlord on January 18, 2013, but which has not been returned. I accept that the landlord was properly provided with the tenants' forwarding address in writing on several occasions after the tenancy ended, and that he wrote back to the tenants that he would not return their deposit. The tenants did not consent in writing to the landlord retaining any of the deposit. The landlord has not filed any formal application to retain the deposit. I further note that although a walk through was done at the start of the tenancy, the tenants were never provided with a Condition Inspection Report by the landlord setting out the condition of the premises at the start of the tenancy.

Analysis

Given that the landlord has not filed any claim for damage or cleaning, the condition of the premises is not a relevant issue in this hearing. Nevertheless, I accept the tenants' testimony that the landlord's agent who conducted the final inspection at the end of the tenancy confirmed the premises had been left in a clean and undamaged condition.

There is no evidence before me that any of the exceptions to the landlord's obligations under section 38(1) apply in this case. There is no evidence that any statutory grounds extinguish the tenants' right to claim the deposit. I also note that even though claim to the deposit has been filed by the landlord, any claim to a security deposit by a landlord is extinguished in cases where no Condition Inspection Report is prepared and provided to the tenants, pursuant to section 24(2) of the Residential Tenancy Act.

Policy Guideline 17 provides that unless the tenants have specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit in cases where the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing, and whether or not the landlord may have a valid monetary claim as against the tenants. In this case, the tenants have not waived any right to a doubling of the deposit.

Under these circumstances, I find the tenants entitled to double the deposit, which is \$1,800.00, together with recovery of their \$50.00 filing fee.

Conclusion

The tenant is entitled to double the deposit, plus their filing fee from the landlord. The landlord must pay the sum of \$1,850.00 to the tenants immediately.

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: January 14, 2014

Residential Tenancy Branch