



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing was convened as a result of the tenants' application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "*Act*"). The tenants applied for the return of double their security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover their filing fee.

Tenant "KD", and the landlord, appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties had the hearing process explained to them, were provided the opportunity to ask questions about the hearing process, and provided affirmed testimony and presented documentary evidence.

During the hearing, the parties confirmed that they received evidence from the other party and that they had the opportunity to review that evidence prior to the hearing. As a result, I find the parties were served in accordance with the *Act*.

Issue to be Decided

- Are the tenants entitled to the return of double their security deposit under the *Act*?

Background and Evidence

The parties agreed that a fixed term tenancy began on January 1, 2012, and reverted to a month to month tenancy after July 1, 2012. Monthly rent in the amount of \$850.00 plus 40% utilities, was due on the first day of each month. A security deposit of \$425.00 was paid by the tenants at the start of the tenancy.

The parties agreed that the tenants vacated the rental unit as of August 31, 2013. The parties agreed that the tenants provided their written forwarding address to the landlord

on September 24, 2013. The landlord confirmed that he received that e-mail from the tenants on September 24, 2013, which included the forwarding address of the tenants. The tenants signed over \$73.31 of the security deposit to the landlord for unpaid hydro. The tenants stated that the landlord returned \$226.69 on September 30, 2013, to the tenants, which the tenants successfully cashed.

The landlord stated that he withheld \$150.00 due to damages allegedly caused by the tenants, and after deducting the unpaid hydro of \$73.31, returned \$226.69 to the tenants. The tenants clarified in their application that the landlord mistakenly used a security deposit of \$450.00 in his calculations, when in fact the security deposit of the tenants was only \$425.00. The landlord did not file an application to claim towards the tenant's security deposit, and confirmed that he did not have permission from the tenants in writing to retain \$150.00, for alleged damages to the rental unit.

Although a settlement offer was made by the landlord during the hearing, the tenants did not agree to settle this matter during the hearing.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Tenants' claim for the return of double their security deposit – I accept that the tenancy ended on August 31, 2013 as this was not disputed during the hearing. Section 38 of the *Act* applies which states:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

[emphasis added]

In the matter before me, **I find** that the landlord did not repay the tenants' security deposit or make an application for dispute resolution claiming against the tenants' security deposit within 15 days of the latter date of September 24, 2013, the date the written forwarding address of the tenants was confirmed received by e-mail by the landlord. In the matter before me, September 24, 2013 is later than the end of tenancy date, which was August 31, 2013.

I find that the landlord erred in his calculations, by indicating that the tenant's security deposit was \$450.00, which it was only \$425.00. **I find** that the parties agreed that the landlord could withhold \$73.31 from the tenants' security deposit for unpaid hydro, which resulted in a net security balance owing to the tenants in the amount of \$351.69. The tenants' security deposit did not accrue interest during the tenancy.

I find the landlord breached section 38 of the *Act* by failing to return the tenant's security deposit balance of \$351.69 within 15 days of September 24, 2013, the date the landlord confirmed receiving the tenants' written forwarding address, having not made a claim towards the security deposit and without written permission from the tenants to retain the \$150.00, withheld by the landlord. Therefore, **I find** the tenants are entitled to the return of double their security deposit balance of \$351.69, for a total of **\$703.38**, less the \$226.69 already returned to the tenants by the landlord, for a balance owing by the landlord to the tenants in the amount of **\$476.69**.

As the tenants' application had merit, **I grant** the tenants the recovery of their filing fee in the amount of **\$50.00**.

Monetary Order – I find that the tenants have established a monetary claim in the amount of **\$526.69**, comprised of the \$476.69 in compensation for a doubled security deposit of \$703.38 less the payment from the landlord to the tenants of \$226.69, for a balance of \$476.69, plus the \$50.00 filing fee. **I grant** the tenants a monetary order pursuant to section 67 of the *Act* in the amount of **\$526.69**. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The tenants' application had merit. The tenants have been granted a monetary order under section 67 in the amount of \$526.69. This order must be served on the landlord, and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: February 7, 2014

Residential Tenancy Branch

