



Dispute Resolution Services

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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 ' 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.

Service of the hearing documents, by to the landlord, was done in accordance with section 89 of the *Act*; served by registered mail to the landlord on April 16, 2014.

Canada Post tracking numbers were provided in sworn testimony. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenants attended the hearing, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

Are the tenants entitled to a Monetary Order to recover double the security deposit?

Background and Evidence

The tenant FM testified that this tenancy started on October 15, 2012 for a fixed term tenancy for one year. The tenancy continued after that time on a month to month basis. The tenancy ended on February 01, 2014. Rent for this unit was \$2,300.00 per month due on the first of each month. The tenants paid a security deposit of \$1,150.00 on October 15, 2012.

FM testified that the landlord did not do a move in or a move out condition inspection report with the tenants at the start or end of the tenancy. The landlord's daughter did attend at the unit on February 01, 2014 and informed the tenants that everything was good and clean.

FM testified that the tenants gave the landlord their forwarding address in writing by mail on March 14, 2014 and a copy of that letter dated March 14, 2014 has been provided in evidence. FM testified that they requested that the landlord return the security deposit but the landlord refused to do so because the landlord stated that the tenants had broken the dishwasher and failed to clean the kitchen. FM testified that the dishwasher broke down in 2013 and the landlord failed to repair it. FM testified that they had a cleaner at the house and this cleaner cleaned the entire house. FM testified that after they moved from the unit the landlord listed the house for sale and it has since been demolished. FM testified that the tenants did not give the landlord written or verbal permission to keep all or part of their security deposit. The tenants seek to recover double the security deposit to a sum of \$2,300.00. The tenants also seek to recover the \$50.00 filing fee from the landlord.

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 or pet deposit for damages is extinguished.

When a landlord's right to claim against the security deposit has been extinguished the landlord is not entitled to file a claim to keep the security deposit for damages to the unit, site or property; If the security deposit has not been returned to the tenants within 15 days of either the end of the tenancy or the date the tenants gave 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 March 19, 2014; five days after it was posted pursuant to s. 90(a) of the *Act*. As a result, the landlords had until April 03, 2014 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*. There has been no accrued interest on the security deposit for the term of the tenancy.

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

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 **\$2,350.00**. 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: August 08, 2014

Residential Tenancy Branch

