



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, plus interest, plus the recovery of the cost of their filing fee.

Tenant J.R. and the landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties presented their evidence. A summary of their evidence is provided below and includes only that which is relevant to the hearing.

During the hearing, the landlord confirmed that she received the tenants' documentary evidence and that she had the opportunity to review the tenants' documentary evidence prior to the hearing. The landlord confirmed that she did not submit evidence in response to the tenants' application. Based on the above, I find the landlord was served with the tenants' documentary evidence in accordance with the *Act*.

Preliminary Matter

During the hearing, tenant J.R. provided the tenants' new mailing address which has been included on the cover page of this Decision for ease of reference for the parties and which the landlord confirmed as having noted during the hearing.

Issue to be Decided

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

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. Originally, a fixed term tenancy began on March 1, 2008 and reverted to a month to month tenancy after February 28, 2009. The parties then entered into another fixed term tenancy agreement from June 1, 2011 to May 31, 2013, resulting in the tenancy reverted back to a periodic month to month tenancy agreement after May 31, 2013.

Monthly rent in the amount of \$1,000.00 was due on the first day of each month at the start of the tenancy and was increased over the course of the tenancy to \$1,350.00 per month. A security deposit of \$500.00 was paid by the tenants at the start of the tenancy, which the landlord continues to hold.

The parties agreed that the tenants vacated the rental unit on July 31, 2013. The parties confirmed that the tenants provided their written forwarding address as of July 4, 2013 which was listed on the tenants' written one month's notice to end the tenancy dated June 30, 2013 and received by the landlord on July 4, 2013. The landlord testified that the tenants did not provide the landlord with authorization to retain any portion of their security deposit and has not filed an application to claim towards the tenants' security deposit. There is no dispute that the tenants' security deposit was not returned to the tenants by the landlord. The total interest accrued on the tenants' \$500.00 security deposit since the start of the tenancy is \$6.31.

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 the security deposit – I accept that the tenancy ended on July 31, 2013 when the tenants vacated the rental unit. 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.

[my emphasis added]

In the matter before me, the parties agreed that the landlord did not submit an application claiming towards the tenants' security deposit and that the landlord continues to hold the tenant's \$500.00 security deposit. Furthermore, the landlord confirmed that she did not have permission from the tenants to deduct any amount from their security deposit.

Given the above, and pursuant to section 38 of the *Act*, I find the landlord had to either return the tenants' full security deposit plus interest to the tenants or file an application to claim towards the security deposit within 15 days of the date the tenants vacated the rental unit, July 31, 2013, and having received the tenants' written forwarding address on July 4, 2013, which was provided by the tenants in writing on their written one month notice to end the tenancy. Accordingly, the landlord had to return the tenants' security deposit plus interest or file an application claiming towards the security deposit by August 15, 2013, which the landlord failed to do. In addition, the landlord did not have authorization from the tenants to retain any portion of her security deposit.

Based on the above, **I find** the landlord breached section 38 of the *Act* by failing to return the security deposit in full, plus interest, to the tenants within 15 days of vacating the rental unit on July 31, 2013, having not made a claim towards the security deposit. Therefore, **I find** the tenants are entitled to the return of double their original security deposit of \$500.00 in the amount of **\$1,000.00**. The original security deposit of \$500.00 has accrued **\$6.31** in interest since the start of the tenancy, which brings the total security deposit owing to the tenants in the amount of **\$1,006.31**, comprised of

\$1,000.00 for the doubled security deposit, plus \$6.31 in interest on the original amount of the \$500.00 security deposit.

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 total monetary claim in the amount of **\$1,056.31**, comprised of \$1,006.31 for the doubled security deposit including interest, plus the \$50.00 filing fee. **I grant** the tenants a monetary order pursuant to section 67 of the *Act* in the amount of **\$1,056.31**. 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 and the tenants' security deposit has been doubled due to the landlord breaching section 38 of the *Act* as a result. The tenants have been granted a monetary order under section 67 in the amount of \$1,056.31. 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: September 29, 2014

Residential Tenancy Branch

