



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 to recover a \$1200.00 security deposit, doubled pursuant to the provisions of s. 38 of the *Residential Tenancy Act* (the “Act”).

Issue(s) to be Decided

Does the relevant evidence presented at hearing show that the tenants are entitled to recover the doubled deposit?

Background and Evidence

The rental unit is a two bedroom “plus den” condominium apartment. The three tenants moved in in January 2012. They vacated the premises at the end of December 2013. It appears uncontested that by agreement, new tenants moved in a couple of days early.

The tenants provided the landlord with a forwarding address in writing by the end of January 2014. The landlord has not repaid the \$1200.00 security deposit nor has she brought an application to keep all or a portion of it.

The landlord testified that there was damage in the suite and that there was a mutual agreement for the tenants to either return and repair or for the landlord to repair and keep the deposit as compensation. The two attending tenants deny such an arrangement and indicate they intended to return to repair but could not because of the new tenants.

Analysis

Section 38 of the *Act* requires that once a tenancy has ended and once a tenant has provided a forwarding address in writing, the landlord must, within 15 days, either repay the deposit or make application to keep all or a portion of it. If the landlord fails to do either within the 15 day period, a deposit doubling penalty is imposed. Despite s. 38, a landlord remains free to make an application for a monetary award for damages subject to any relevant time limitation.

If a landlord has an agreement with the tenant to retain any portion of the deposit money, by s. 38(4) that agreement must be in writing.

I find that s. 38 applies to the circumstances here. The tenants are entitled to recovered the doubled deposit amount of \$2400.00 plus the \$50.00 filing fee paid to make this application.

Conclusion

The application is allowed.

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 26, 2015

Residential Tenancy Branch

