



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNSD, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62;
- a monetary order for return of all or a portion of the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The two tenants, tenant ACR ("tenant") and "tenant CF," as well as the landlord attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that the landlord was served with the tenants' Application for Dispute Resolution hearing package ("Application") on December 23, 2014, by way of registered mail. The landlord confirmed receipt on December 29, 2014. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' Application.

Issues to be Decided

Are the tenants entitled to an order requiring the landlord to comply with the *Act* with respect to returning their security deposit?

Are the tenants entitled to a monetary order for the return of double the amount of their security deposit?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

Both parties agreed that this tenancy began on November 1, 2010 for a fixed term of one year, after which it transitioned to a month to month tenancy. Both parties agreed that this tenancy ended on November 30, 2014. Monthly rent in the amount of \$1,950.00 was payable on the first day of each month. A written tenancy agreement was provided by the tenants with their Application.

Both parties agreed that a security deposit of \$975.00 was paid by the tenants on October 7, 2010. The tenant testified that the landlord returned a portion of the security deposit in the amount of \$730.00, on December 16, 2014, by way of regular mail. The tenants confirmed that they have not yet cashed the landlord's cheque for \$730.00. The tenants provided a copy of this cheque, which is dated for December 15, 2014. Both parties agreed that the landlord continues to retain \$250.00 from the tenants' security deposit. The landlord stated that the above total of \$980.00 (\$730.00 + \$250.00) for the tenants' security deposit included an additional \$5.00 of interest to account for the landlord's retention of the security deposit since the beginning of this tenancy.

Both parties agreed that the tenants provided the landlord with a letter, dated October 25, 2014, by way of registered mail on October 26, 2014. The landlord acknowledged receipt of this letter on October 27, 2014. The tenants provided a copy of this letter with their Application. The letter provided notice of the tenants' intention to vacate the rental unit on November 30, 2014 and requested a return of their security deposit of \$975.00 within 15 days of the end of the tenancy, by December 15, 2014. The letter also provided the tenants' forwarding address.

The landlord stated that he could not recall whether a move-in inspection was completed at the beginning of this tenancy. The tenants indicated that a move-in inspection did not occur. Both parties agreed that a brief move-out inspection occurred on November 30, 2014. Both parties agreed that no condition inspection reports were completed by either party upon move-in or move-out. Both parties agreed that the tenants did not provide verbal or written permission to the landlord to retain any amount from their security deposit. The landlord stated that he was unaware that he required written permission from the tenants. The landlord stated that he did not make an application for dispute resolution to retain any amount from the tenants' security deposit because he was unaware that he was required to do so. This is despite the fact that the landlord drafted the tenancy agreement, specifically indicating that he would return the tenants' security deposit within 15 days of the end of the tenancy unless he applied for arbitration under the *Act*, to retain any portion from the deposit. The landlord stated that

he did not realize that this provision was in the tenancy agreement because another person assisted him with drafting the agreement.

Analysis

While I have turned my mind to all the documentary evidence, including miscellaneous letters, agreements, emails, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claims and my findings around each are set out below.

Section 38 of the *Act* requires the landlord to either return all of the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or if an amount at the end of the tenancy remains unpaid (section 38(3)(b)).

The tenants seek the return of double the value of their security deposit of \$975.00 from the landlord. The tenants provided their forwarding address to the landlord, who acknowledged receipt on October 27, 2014. The tenancy ended on November 30, 2014. The tenants did not give the landlord written permission to retain any amount from their security deposit. The landlord did not return the full security deposit to the tenants or make an application for dispute resolution to claim against this deposit, within 15 days of the end of this tenancy.

The landlord continues to hold a portion of the tenants' security deposit. Over the period of this tenancy, no interest is payable on the landlord's retention of the tenants' security deposit. In accordance with section 38(6)(b) of the *Act*, I find that the tenants are entitled to double the value of their security deposit of \$975.00, totalling \$1,950.00.

As the tenants were successful in their Application, they are entitled to recover the \$50.00 filing fee from the landlord.

Conclusion

As the landlord has already returned a portion of the security deposit to the tenants, I order the tenants to immediately cash the landlord's cheque, dated December 15, 2014, in the amount of \$730.00.

I also issue a monetary Order in the tenants' favour for the remaining amount of \$1,270.00, against the landlord under the following terms. This order allows the tenants an award of double their security deposit, less the returned portion, plus the recovery of their filing fee:

Item	Amount
Return of Double Security Deposit as per section 38 of the Act ($\$975.00 \times 2 = \$1,950.00$)	\$1,950.00
Less returned portion of security deposit	-730.00
Recovery of Filing Fee for Application	50.00
Total Monetary Order	\$1,270.00

The tenants are provided with a monetary order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

Given that the tenants were provided with a return of double their security deposit, this satisfies their application for an order for the landlord to comply with the *Act*, regulation or tenancy agreement.

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: March 09, 2015

Residential Tenancy Branch

