



Dispute Resolution Services

Page: 1

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 the tenants' application for a Monetary Order to recover the security deposit; and to recover the filing fee from the landlords for the cost of this application.

The tenants, the landlord's advocate and the landlords attended the conference call hearing and gave sworn testimony. The landlords provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. This was sent by registered mail to the tenants. The tenants agreed they did not collect their mail and are deemed to have been served the landlords' evidence five days after it was sent. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

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

Background and Evidence

The parties agree that this tenancy started on August 15, 2013 for a fixed term tenancy until August 01, 2014. Rent for this unit was \$1,300.00 per month and was due on the first day of each month in advance. The tenants paid a security deposit of \$650.00 on July 25, 2013.

The tenants testified that the landlords have failed to return the security deposit within 15 days of receiving their forwarding address in writing. The tenants testified that the forwarding address was provided to the landlords on August 14, 2014 at the time the move out inspection was completed. The tenants testified that the landlords did not complete the move out condition inspection report during the inspection of the rental unit. The tenants testified that the landlords were not given written permission to keep all or part of the security deposit. The tenants testified that they do not waive their right to now have the security deposit doubled and seek to amend their application to this effect.

The landlords' advocate testified on behalf of the landlords. The landlords' advocate agreed that the landlords did receive the tenants' forwarding address in writing on August 14, 2014. The landlords' advocate testified that the tenants had kept a dog in the unit when no pets were allowed and the unit had to be cleaned to get rid of any pet odour due to the landlords' allergies. This work cost the landlords \$367.50. The landlords advocate testified that the unit had been freshly painted at the start of the tenancy; however, at the end of the tenancy three walls were bleached out and these had to be repainted at a cost of \$260.00. The landlords' advocate agreed that no move out condition inspection report was completed.

The landlords' advocate testified that the landlords sought advice at the Residential Tenancy Office and were not informed of the 15 days rule to return the security deposit or file an application to keep it.

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 35(3) of the *Act* require a landlord to complete a condition inspection report at the 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. The landlord must arrange the inspection with the tenant on the last day of the tenancy or on another mutually agreed day before new tenants move into the rental unit. In failing to complete the condition inspection report when the tenants moved out, I find the landlords contravened s. 35(3) of the *Act*. Consequently, s. 36(2)(a) of the *Act* says that the landlords' right to claim against the security deposit for damages is extinguished.

When a landlords' right to claim against the security deposit for damages has been extinguished the landlords must return the security deposit to the tenants within 15 days of either the end of the tenancy or the date the tenant gives the landlord their forwarding address in writing.

Therefore, based on the above and the evidence presented I find that the landlords did receive the tenants' forwarding address in writing on August 14, 2014. As a result, the landlord had until August 29, 2014 to return all of the tenants' security deposit. As the landlords failed to do so, the tenants have established a claim for the return of double the security deposit to an amount of **\$1,300.00**, 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 landlords pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the tenants' revised monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,350.00**. The Order must be served on the Respondents 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: March 30, 2015

Residential Tenancy Branch

