



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PARK TOWER APTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

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

- authorization to obtain a return of double their security deposit, pursuant to section 38; and
- authorization to recover the filing fee for their application from the landlord, pursuant to section 72.

The landlord's agent, DM ("landlord") and the two tenants, tenant KS ("tenant") and "tenant OS" attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions, and to call witnesses. The landlord confirmed that he is the building manager and that he had authority to speak on behalf of the landlord company named in this application, as an agent at this hearing.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package ("Application"). 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 a monetary award equivalent to double the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

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, 2013 and ended on October 31, 2014. Monthly rent in the amount of \$1,700.00 was payable on the first day of each month. The landlord confirmed that a written tenancy agreement governed this tenancy.

Both parties agreed that a security deposit of \$850.00 was paid by the tenants. The tenant testified that the landlord returned this security deposit in full by way of a letter, dated November 20, 2014, which the tenant says he received a few days after that date. The landlord acknowledged that he was beyond the 15 day timeline as per section 38 of the *Act*, to return the tenants' security deposit. The landlord agreed that the tenants provided a forwarding address in writing by way of a letter to the landlord, on October 31, 2014. Both parties agreed that no move-in or move-out condition inspection reports were completed for this tenancy.

The landlord confirmed that the tenants did not provide written permission to the landlord to retain any amount from their security deposit. The landlord confirmed that no application for dispute resolution was filed by the landlord to retain any amount from the tenants' security deposit. The landlord confirmed that he intended to file an application in November 2014 and again prior to this hearing, but that it was not filed in time to join it as a cross-application to this hearing.

Analysis

While I have turned my mind to the testimony of the parties, as no documentary evidence was provided by either party with the exception of service documents, 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 the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' 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 tenants' 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 an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

The tenants seek the return of double the value of their security deposit of \$850.00 from the landlord. The tenants provided their forwarding address to the landlord, who acknowledged receipt on October 31, 2014. The tenancy ended on the same date. The tenants did not give the landlord written permission to retain any amount from their deposit. The landlord did not return the deposit to the tenants or make an application for dispute resolution to claim against this deposit, within 15 days of October 31, 2014. Over the period of this tenancy, no interest is payable on the landlord's retention of the 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 totalling \$1,700.00, minus the \$850.00 portion already returned to the tenants. As the tenants were successful in their Application, they are entitled to recover the \$50.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of \$900.00 against the landlord under the following terms:

| Item | Amount |
|--|-----------------|
| Return of Double Security Deposit as per section 38 of the <i>Act</i> ($\$850.00 \times 2 = \$1,700.00$) | \$1,700.00 |
| Less returned portion of security deposit | -850.00 |
| Recovery of Filing Fee for Application | 50.00 |
| Total Monetary Order | \$900.00 |

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.

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: June 02, 2015

Residential Tenancy Branch