



Dispute Resolution Services

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

Both parties (two tenants and the landlord) attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord confirmed receipt of the tenants' Application for Dispute Resolution and evidence. The tenants both confirmed receipt of the landlord's evidence package.

Issue(s) to be Decided

Are the tenants entitled to a monetary award for the return of all or a portion of their security deposit? Are the tenants entitled to an order that the landlord comply with the Act, by returning the security deposit? Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This one year fixed term tenancy began on October 1, 2013 with a rental amount of \$1425.00 payable on the first of each month. After September 30, 2014, the tenancy continued on a month to month basis. The landlord testified that she continues to hold a \$712.50 security deposit paid by the tenants on September 30, 2013. After the tenants vacated the rental unit on November 1, 2014, the landlord returned \$6.90 of the original

security deposit to the tenants. The tenants applied for return of the remainder of their security deposit as well as an award equivalent to the amount of their security deposit for the landlord's failure to act in accordance with section 38 of the Act as well as recovery of their \$50.00 filing fee for a total amount of \$1468.10.

Tenant JO testified that he gave notice to the landlord via email on both September 6, 2014 and September 27, 2014. He provided undisputed testimony that he and his co-tenant moved out on November 1, 2014. He also testified that he provided the landlord with his forwarding address prior to move-out and on the condition inspection report. He testified, referring to the condition inspection report submitted as evidence for this hearing that the move-out condition inspection was completed on November 1, 2014.

Tenant JO submitted that the move-out condition inspection report;

- was not completed at move-in;
- does not identify any deductions from the security deposit; or
- agreement by the tenants to any deductions; and
- is not signed by either the tenants or the landlord.

The landlord submitted photographic evidence of the condition of the rental unit when the tenants moved out. The photographs included; a somewhat dirty cabinet underneath the sink; a dirty stove-top; and dirty window sills. The landlord submitted a total of four photographs into evidence. The landlord also submitted a work order from an appliance company for a replacement parts on the refrigerator in the rental unit, specifically the handle. That invoice was in the amount of \$169.05. She submitted a receipt from a cleaning company in the amount of \$315.00 for an "initial one time cleaning". The landlord also submitted a receipt with no company information in the amount of \$250.00 indicating that it reflected cost for the removal and patch nail holes within the rental unit. The total of the receipts, and the amount retained by the landlord was as follows;

Item	Amount
Refrigerator part replacement	\$169.05
Cleaning of rental unit on move-out	315.00
Remove, Patch Nail Holes	250.00
Total Amount of Landlord's Receipts	\$734.05

Tenant JO submitted that some of the receipts, particularly the cleaning receipts are dated after the new tenants had moved into the rental unit. The tenants both provided undisputed testimony that they received a cheque from the landlord in the amount of \$6.90, a copy of the condition inspection report and the receipts noted above on

November 18, 2014. I note that the landlord's deduction does not accurately reflect the amount of the tenants' security deposit or the amount of the costs the landlord claims to have incurred. There is no evidence nor has the landlord testified with respect to any application for dispute resolution or substantive communication with the tenants prior to November 18, 2014 regarding a deduction from their security deposit.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*).

With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant." The tenants both gave undisputed sworn testimony that the landlord did not obtain their written authorization at the end of the tenancy to retain any portion of their security deposit. The tenant submitted documentary evidence, including condition inspection reports as evidence to show that they did not agree nor were they informed that the landlord would keep a portion of their deposit.

In this case, I find that the landlord has not returned the tenants' security deposit in full within 15 days of receipt of the tenant's vacating the residence and providing his forwarding address in writing on November 1, 2014 (on the move-out condition inspection report). The tenant was candid in testifying that he had discussed minor repairs to the rental unit with the landlord and provided proof that he attempted to negotiate an amount with her. The tenant provided several items of correspondence showing his attempts to either have his security deposit returned or for the landlord to provide a reasonable deduction amount. Despite the reasonable position of the tenants, the landlord took no steps to do either until the expiry of her 15 day timeline.

The undisputed testimony of Tenant JO was that the landlord's \$6.90 cheque was received by the tenants on November 18, 2014. The landlord has not applied for dispute

resolution to obtain authorization to retain any portion of the tenant's security deposit. The landlord did not file an application to be considered at this hearing for authorization to retain a portion of the tenants' security deposit.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;
- If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;
- If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;
- If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;
- whether or not the landlord may have a valid monetary claim.

I find the landlord's right to claim against the tenants' security deposit has been extinguished as she did not file a claim against the deposit within 15 days of the tenants' providing a forwarding address. In accordance with section 38 of the *Act*, I find that the tenants are entitled to a monetary order amounting to double their security deposit with any interest calculated on the original amount only. From this award, I deduct the \$6.90 already returned to the tenants by the landlord.

As the tenants have been successful in his application, I find that the tenants are also entitled to recover their filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenants' favour under the following terms which allows the tenants to recover the remainder of their original security deposit plus a monetary award equivalent to 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*:

Item	Amount
Return of remainder of Security Deposit (\$712.50 - \$6.90)	\$705.60
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	712.50
Filing fee for this Application	50.00
Total Monetary Order	\$1468.10

The tenants are provided with this Order in the above terms and the landlord(s) must be served with a copy of this Order as soon as possible. Should the landlord(s) 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: July 03, 2015

Residential Tenancy Branch

