



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD, FF

Introduction

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

- a monetary order for return of all or part of the security deposit pursuant to section 67; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing by conference call and gave undisputed affirmed testimony. Both parties confirmed in their direct testimony that no documentary evidence was submitted. The landlord confirmed receipt of the tenants' notice of hearing package.

Issue(s) to be Decided

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

Background and Evidence

The landlord stated that the tenants breached the fixed term tenancy by ending it prematurely on April 27, 2015. The tenants disagreed and stated that they vacated the rental unit on April 1, 2015. The landlord stated that the \$550.00 security deposit was withheld and not returned to the landlord as of the date of this hearing. Both parties confirmed that the landlord received the tenants' forwarding address in writing on April 29, 2015.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security 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 subsection 38(6) of the Act equivalent to the value of the security deposit.

It is clear based upon the landlord's undisputed affirmed testimony that he received the tenants' forwarding address in writing on April 29, 2015. The landlord also confirmed that the \$550.00 security deposit was not returned to the tenants, nor did the landlord make an application for dispute resolution to dispute the return of the security deposit. On this basis, I find that the tenants have established a monetary claim for the return of the \$550.00 security deposit as the landlord has failed to comply with section 38. As such, section 38 (6) of the Act applies and the landlord is liable to pay an award equal to the \$550.00 security deposit. The tenants have established a total monetary claim of \$1,100.00.

As the tenants have been successful in their application, they are entitled to recovery of the \$50.00 filing fee.

Conclusion

I issue a monetary order in the tenants' favour under the following terms which allows the tenants to recover 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 Security Deposit | \$550.00 |
| Monetary Award for Landlord's Failure to Comply with s. 38 of the Act | 550.00 |
| Recover Filing Fee | 50.00 |
| Total Monetary Order | \$1150.00 |

The tenants are provided with these orders in the above terms and the landlord must be served with a copy of these orders 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 orders 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: September 30, 2015

Residential Tenancy Branch

