



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 the return of double the security deposit pursuant to section 67; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing by conference call and gave affirmed testimony. The landlord confirmed receipt of the tenants' notice of hearing package and the submitted documentary evidence. The tenants confirmed receipt of the landlord's late evidence package.

Preliminary Issue

The landlord provided no explanation for the late submission of documentary evidence other than to state that the tenant had damaged the rental property and that this was his evidence. It was clarified with both parties that the submission of late evidence was not allowed as per the Rules of Procedure and that the landlord was unable to provide sufficient details of how the landlord's possible future claim in damages was relevant to the tenants' request for the return of double the security deposit. As such, the landlord's late submission of documentary evidence was excluded as it was not relevant.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for the return of double the security deposit and to recover the filing fee?

Background and Evidence

This tenancy began on January 15, 2014 on a fixed term tenancy ending on December 31, 2014 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated December 23, 2013. The monthly rent is \$4,500.00 payable on the 1st day of each month and a security deposit of \$2,250.00 was paid on January 15, 2014.

The tenants stated that a Notice to vacate the tenancy was sent by Canada Post Registered Mail on March 26, 2015 to the landlord to end the tenancy on April 30, 2015. The tenants forwarding address in writing was provided at the same time. The tenants stated that the tenants vacated the rental unit on April 29, 2015 and returned the keys to the rental on April 29, 2015. The tenants stated that as of the date of filing the application for dispute resolution the landlord has failed to return the original \$2,250.00 security deposit. The tenants seek a monetary claim of \$4,500.00 which consists of the original \$2,250.00 security deposit and compensation as per section 38 (6) of the Act.

The landlord stated that the tenants left the rental damaged requiring repairs and that this was his reasoning for keeping the security deposit. The landlord stated that he did not have authorization from the Residential Tenancy Branch nor was there permission from the tenant to retain the security deposit.

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. However, pursuant to paragraph 38(4)(a) of the Act, 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.

Both parties confirmed that the tenancy ended on April 29, 2015 and that the tenants provided their forwarding address in writing to the landlord in a letter (Notice to Vacate) dated March 24, 2015. The landlord confirmed that he still holds the original \$2,250.00 security deposit and that permission to retain the security deposit was not obtained from the Residential Tenancy Branch or the tenants.

I find based upon the undisputed affirmed testimony of both parties that the landlord failed to comply with section 38 (1) and that section 38 (6) applies that the landlord is required to pay the tenants an amount equal to the \$2,250.00 security deposit.

The tenant has established an entitlement for \$4,500.00 under section 38 of the Act. Having been successful in their application the tenants are also entitled to recovery of their \$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 and recovery of the filing fee:

Item	Amount
Return of Security Deposit	\$2,250.00
Monetary Award for Landlord's' Failure to Comply with s. 38 of the Act	2,250.00
Recover Filing Fee	50.00
Total Monetary Order	\$4,550.00

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: November 05, 2015

Residential Tenancy Branch

