



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened as a result of the tenants' application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "*Act*"). The tenants applied for the return of double their security deposit, plus the recovery of the cost of the filing fee.

The tenants and the landlord attended the teleconference hearing and gave affirmed testimony. During the hearing the parties presented their evidence. A summary of their evidence is provided below and includes only that which is relevant to the hearing.

The landlord confirmed having received and reviewed the documentary evidence from the tenants prior to the hearing. The landlord also confirmed that he did not submit any documentary evidence in response to the tenants' application. As a result, I find the landlord was served in accordance with the *Act*.

Issues to be Decided

- Are the tenants entitled to the return of double their security deposit under the *Act*?
- Are the tenants entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on May 1, 2014 and expired on October 31, 2014. I note that the original tenancy agreement was for a six month fixed term. Monthly rent of \$1,850.00 was due on the first day of each month. The tenants paid a security deposit of \$925.00 at the start of the tenancy which the landlord continues to hold.

The parties agreed that the tenants vacated the rental unit on June 30, 2015. The parties agreed that the tenants provided their written forwarding address to the landlord on May 29, 2015 when the tenants provided the landlord with their one month written notice that they would be vacating the rental unit as of June 30, 2015.

The parties agreed that no portion of the tenants' security deposit has ever been signed over to the landlord. The landlord confirmed that he has not applied towards retaining the tenants' security deposit. The parties also agreed that neither an incoming nor an outgoing condition inspection report were completed by the landlord.

The landlord stated that he did not return the tenants' security deposit as they breached a fixed term tenancy.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Firstly, I afford no weight to the landlord's claim that the tenants breached a fixed term tenancy. I find that the tenancy agreement was a fixed term tenancy for a period of six months only, of which the tenants satisfied that term in full. Due to the confusing way in which the landlord completed the tenancy agreement, I find the tenancy reverted to a month to month tenancy after October 31 of 2014. I find the tenants also provided written notice to end the month to month tenancy in accordance with section 45 of the *Act*. Furthermore, even if the tenants had breached a fixed term tenancy, which they did not, the landlord must still make an application to retain the tenants' security deposit, which the landlord failed to do.

Tenants' claim – I accept that the tenancy ended on June 30, 2015 when the tenants vacated the rental unit having provided their written one month notice to end the tenancy to the landlord on May 29, 2015. Section 38 of the *Act* applies which states:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

[my emphasis added]

In the matter before me, the parties agreed that no security deposit has ever been returned by the landlord. Furthermore, the landlord confirmed that he did not complete neither an incoming nor an outgoing condition inspection. The landlord stated that the tenants have not signed over any portion of their security deposit to the landlord.

Given the above, and pursuant to section 38 of the *Act*, I find the landlord had to return the tenants' full security deposit, which has accrued no interest, to the tenants within 15 days of June 30, 2015, which is later than the date the written forwarding address of the tenants was provided to the landlord.

I find that the landlord had already extinguished his right to claim towards the tenants' security deposit by failing to complete an incoming or outgoing condition inspection report as per sections 24(2) and 36(2) of the *Act*.

Accordingly, the landlord had to return the tenants' security deposit in full by July 15, 2015, which the landlord failed to do.

Based on the above, I find the landlord has breached section 38 of the *Act* by failing to return the tenants' security deposit in full to the tenants within 15 days of June 30, 2015, as described above. Therefore, I find the tenants are entitled to the return of double their original security deposit of \$925.00 in the amount of **\$1,850.00**.

As the tenants' application had merit, I grant the tenants the recovery of the cost of the filing fee in the amount of **\$50.00**.

Monetary Order – I find that the tenants have established a total monetary claim in the amount of **\$1,900.00**, comprised of \$1,850.00 for the doubled security deposit which has accrued no interest, plus the recovery of the \$50.00 filing fee. I grant the tenants a monetary order pursuant to section 67 of the *Act* in the amount of **\$1,900.00**.

I caution the landlord to comply with sections 23, 35 and 38 of the *Act* in the future. Sections 23 and 35 relate to the requirement to arrange and complete both an incoming and outgoing condition inspection report; section 38 relates to how a security deposit is to be dealt with under the *Act*.

Conclusion

The tenants' application is successful.

The tenants' security deposit has been doubled due to the landlord breaching section 38 of the *Act*. The tenants have been granted a monetary order under section 67 in the amount of \$1,900.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: January 11, 2016

Residential Tenancy Branch

