



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of double the amount of their security deposit, pursuant to section 38;
- authorization to recover their filing fee for this application from the landlord, pursuant to section 72.

The landlord did not attend this hearing, which lasted approximately 16 minutes. The tenant MM ("tenant") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant confirmed that he had authority to represent his wife, "tenant JM," the other tenant named in this application, as an agent at this hearing.

The tenant confirmed that the landlord was served with the tenants' application for dispute resolution hearing package ("Application") on August 19, 2015, by way of registered mail. The tenants provided a Canada Post receipt, tracking number and printout indicating that the landlord signed for and received the package on August 21, 2015. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenants' application on August 24, 2015, five days after its registered mailing.

Issues to be Decided

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

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 their filing fee for this Application from the landlord?

Background and Evidence

The tenant testified that this tenancy began on October 1, 2013 and ended on July 8, 2015. Monthly rent in the amount of \$975.00 was payable on the first day of each month. The tenant testified that a security deposit of \$487.50 was paid to the landlord. The tenant confirmed that the landlord provided a cheque to the tenants in the amount of \$675.00, which the landlord explained via text messages to the tenants, was for the following: \$187.50 from the security deposit, as \$300.00 was deducted for blinds and oven cleaning and half a month's rent of \$487.50 for July 2015, to account for the tenants moving out on July 8, 2015.

The tenant stated that move-in and move-out condition reports were completed for this tenancy. The tenant indicated that a written forwarding address was provided to the landlord by way of the move-out condition inspection report on July 8, 2015.

The tenant maintained that no written permission was provided to the landlord to keep any amount from the security deposit. The tenant explained that he was not aware of any application for dispute resolution filed by the landlord to retain any amount from the deposit.

The tenants seek a return of \$787.50 to account for double the value of the security deposit of \$975.00 minus the \$187.50 returned from the deposit to the tenants. The tenants state that they are entitled to double the value of their deposit because the landlord failed to return their deposit in full or make an application for dispute resolution, within 15 days of July 8, 2015. The tenants also seek to recover the \$50.00 filing fee paid for their Application.

Analysis

While I have turned my mind to the testimony of the tenant, as no documentary evidence was provided aside from the Canada Post service information as noted above, not all details of the submissions and arguments are reproduced here. The principal aspects of the tenants' claims and my findings 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 security 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 tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I accept the tenant's undisputed evidence at this hearing, as the landlord did not attend. The tenancy ended on July 8, 2015 and the tenants' written forwarding address was provided to the landlord on the same date.

The tenants did not give the landlord written permission to retain any amount from their security deposit. The landlord did not return the deposit in full to the tenants or make an application for dispute resolution to claim against the deposit, within 15 days of July 8, 2015. The landlord only returned a portion of the deposit. Therefore, I am required to double the value of the tenants' security deposit.

Over the period of this tenancy, no interest is payable on the landlord's retention of the tenants' security deposit. In accordance with section 38(6)(b) of the *Act*, I find that the tenants are entitled to receive double the value of their security deposit, totalling \$975.00 minus the \$187.50 already returned to the tenants, equalling \$787.50.

As the tenants were successful in their Application, I find that 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 \$837.50 against the landlord. 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: February 15, 2016

Residential Tenancy Branch

