



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "*Act*"). The landlord applied for a monetary order of damages to the unit, site or property, for authorization to keep all or part of the tenants' security deposit, and to recover the cost of the filing fee.

The landlord and an interpreter of the landlord (the "interpreter") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord through the landlord's interpreter was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), the Application for Dispute Resolution (the "Application") and documentary evidence were considered. The landlord provided affirmed testimony that the Notice of Hearing, Application and documentary evidence were served on the tenants via two registered mail packages, comprised of one addressed to each of the two tenants, on September 25, 2015. The tenants signed for and accepted both registered mail packages on October 2, 2015 according to the landlord and the online registered mail tracking website information. As a result, I find that the tenants have been sufficiently served as of October 2, 2015, the date that both registered mail packages were signed for and accepted.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?
- Is the landlord entitled to recover 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 January 20, 2014 and reverted to a month to month tenancy after January 31, 2015. The tenancy ended on June 30, 2015, when the tenants vacated the rental unit. Monthly rent in the amount of \$1,400.00 was due on the first day of each month during the tenancy. A security deposit of \$700.00 was paid by the tenants at the start of the tenancy, which the landlord continues to hold.

The landlord's monetary claim is for \$892.50 and is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Re-painting costs	\$630.00
2. Repair to door and countertops	\$262.50
TOTAL	\$892.50

The landlord testified that the tenants damaged the walls of the rental unit during the tenancy which required \$630.00 to repair after the tenants vacated the rental unit. In addition, the landlord testified that the tenants damaged a door and the countertops which required an additional \$262.50 to repair. In support of the landlord's claim were a condition inspection report, photos, and invoices.

The landlord stated that the tenants provided their written forwarding address after vacating the rental unit in July 2015. Although the landlord could not recall the specific day, the landlord testified that the written forwarding address was provided in July 2015. The landlord applied for dispute resolution claiming towards the tenants' security deposit on September 24, 2015, which is approximately two months after the landlord received the tenants' written forwarding address.

Analysis

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

As I found the tenants were sufficiently served with the Notice of Hearing, Application and documentary evidence and did not attend the hearing, I consider this matter to be unopposed by the tenants. As a result, I find the landlord's application is fully successful in the amount of **\$942.50** which includes the recovery of the cost of the filing fee in the amount of **\$50.00** as the landlord's application is successful, plus the \$892.50 for damages to the rental unit. I have considered the undisputed testimony of the landlord

and that the application was unopposed by the tenants. The landlord continues to hold the tenants' security deposit of \$700.00 which has not accrued any interest to date.

Claim towards tenants' security deposit – 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 landlord testified that the tenants provided their written forwarding address to the landlord in July 2015 yet the landlord did not apply for dispute resolution until September 24, 2015. Therefore, as the specific date in July 2015 was unknown, I find that even using the last day of July in 2015, which was July 31, 2015, the landlord had 15 days to file a claim against the tenants' security deposit by August 15, 2015, which the landlord failed to do. The landlord did not file a claim until September 24, 2015. Therefore, I find the landlord breached section 38 of the *Act* which requires that I double the tenants' security deposit of \$700.00 to **\$1,400.00** even when the tenants failed to attend the hearing as the landlord has claimed against the security deposit. The landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as an order from an arbitrator or the written agreement of the

tenants and did not claim against the security deposit within the 15 day timeline provided for under section 38 of the *Act*.

Monetary Order – I find that the landlord has substantiated a monetary claim of **\$942.50**; however, owes the tenants \$1,400.00 for double the tenants' security deposit due to the landlord breaching section 38 of the *Act*. Therefore, pursuant to section 72 of the *Act*, I offset the landlord's monetary claim of \$942.50 from the tenants' \$1,400.00 security deposit and I grant the tenants a monetary order pursuant to section 67 of the *Act* for the amount owing by the landlord to the tenants in the amount of **\$457.50**.

Conclusion

While the landlord's application is successful, the tenants' security deposit of \$700.00 had doubled to \$1,400.00 due to the landlord breaching section 38 of the *Act*.

The landlord has substantiated a monetary claim of \$942.50; however, owes the tenants \$1,400.00 for double the tenants' security deposit due to the landlord breaching section 38 of the *Act*. Therefore, pursuant to section 72 of the *Act*, I offset the landlord's monetary claim of \$942.50 from the tenants' \$1,400.00 security deposit and I grant the tenants a monetary order pursuant to section 67 of the *Act* in the amount of **\$457.50**. The tenants must serve the landlord with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

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: April 18, 2016

Residential Tenancy Branch

