



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 and the recovery of the cost of their filing fee.

Tenant C.F. (the "tenant") and the landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties presented their evidence. A summary of their testimony is provided below and includes only that which is relevant to the hearing.

Neither party raised any concerns regarding the service of documentary evidence.

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 their filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on August 1, 2014 and reverted to a month to month tenancy after six months which was February 1, 2015. Monthly rent in the amount of \$2,800.00 was due on the first day of each month. A security deposit of \$1,400.00 was paid by the tenants at the start of the tenancy.

The tenancy ended on August 31, 2015 when the tenants vacated the rental unit.

The parties agreed that tenants provided their written forwarding address to the landlord on August 31, 2015 and that the tenants did not sign over any portion of the \$1,400.00 security deposit to the landlord. The landlord testified that she did not send the tenants a cheque for \$1,400.00 until receiving their Application for double the amount of the security deposit. The landlord confirmed that she has not filed an Application claiming towards the tenants' security deposit. The tenants stated that they returned the security deposit cheque to the landlord as they are seeking double the return of the security deposit under section 38 of the *Act*.

The parties agreed that there was no incoming or outgoing condition inspection report completed in accordance with the *Act*.

Analysis

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

Tenants' claim for the return of double the security deposit– I accept that the tenancy ended on August 31, 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, I find that the landlord did not repay the security deposit or make an application for dispute resolution claiming against the security deposit. Given the above, I find the landlord breached section 38 of the *Act* by failing to return the security deposit in full to the tenants within 15 days of receiving the tenants' forwarding address in writing on August 31, 2015 which would have been September 15, 2015. Therefore, I find the tenants are entitled to the return of double the original security deposit of \$1,400.00 for a total amount of **\$2,800.00**. I note that the tenants' security deposit has not accrued interest since the start of the tenancy.

As the tenants were successful with their application, I grant the tenants the recovery of their 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 **\$2,850.00**, comprised of \$2,800.00 for the doubled security deposit, 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 **\$2,850.00**.

As the landlord failed to comply with sections 23 and 35 of the *Act* by failing to complete an incoming or outgoing condition inspection report, and failed to comply with section 38 of the *Act* as described above, I **caution** the landlord to comply with sections 23, 35 and 38 in the future.

Conclusion

The tenants' application is successful.

The tenants have established a total monetary claim in the amount of \$2,850.00, comprised of \$2,800.00 for the doubled security deposit, 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 \$2,850.00. 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: April 18, 2016

Residential Tenancy Branch