



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 applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The tenants applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

The tenants attended the hearing via conference call and provided undisputed affirmed testimony. The landlord did not attend or submit any documentary evidence. The tenants provided testimony that the landlord served them with the landlord's notice of hearing package on November 27, 2015 via Purolator Delivery. The tenants also stated that on November 27, 2015 the landlord was served with the tenants' notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail and have provided a copy of the Canada Post Customer Receipt Tracking number as confirmation. The tenants clarified that the notice of hearing package was returned by Canada Post as "unclaimed" by the landlord and have submitted the original envelope

returned by Canada Post as confirmation. I accept the undisputed affirmed evidence of the tenants and find that the landlord has properly served the tenants with the landlord's notice of hearing package and that the tenants have properly served the landlord with the tenants' notice of hearing package and the submitted documentary evidence as per sections 88 and 89 of the Act. Both parties are deemed to have been properly served as per section 90 of the Act.

Preliminary Issue

At the conclusion of the hearing, after 13 minutes past the start of the scheduled hearing time the landlord's application for dispute was dismissed without leave to reapply as the tenants were in attendance to respond. The landlord failed to attend and provide submissions.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for money owed or compensation and recovery of the filing fee and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings are set out below.

The tenants provided undisputed testimony that there was no signed tenancy agreement, but that a verbal agreement was made to begin a tenancy on July 1, 2015 and end on May 1, 2016. The tenants stated that the monthly rent was \$1,100.00 payable on the 1st day of each month and that a total combined security and pet damage deposit of \$750.00 was paid.

The tenants stated that the tenancy ended on November 24, 2016 after written notice to vacate was given on November 7, 2015. The tenants also confirmed that the tenants' forwarding address in writing was given to the landlord in the same written notice on November 7, 2015.

The tenants seek a monetary claim of \$750.00 for the return of the unreturned combined security and pet damage deposits.

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.

I accept the undisputed affirmed evidence of the tenants and find that the landlord has failed to return the \$750.00 combined security and pet damage deposits within 15 days after the end of the tenancy. The tenants provided their forwarding address in writing on November 7, 2015 and the tenancy ended on November 24, 2015. The tenants have established a claim for the return of the original \$750.00 combined security and pet damage deposits.

As well, the tenants have provided undisputed affirmed evidence that the landlord in failing to comply with section 38 (1) of the Act is subject to section 38 (6). The landlord is also required to pay a monetary award equal to the \$750.00 combined security and pet damage deposits.

The tenants having been successful are entitled to recovery of the \$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/ pet damage deposits plus a monetary award equivalent to the value of their security/ pet damage deposits as a result of the landlord's failure to comply with the provisions of section 38 of the Act:

Item	Amount
Return of Security/ Pet Deposits	\$750.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the Act	750.00
Recovery of Filing Fee	50.00
Total Monetary Order	\$1,550.00

The tenants are provided with this order in the above terms and the landlord(s) must be served with a copy of this order as soon as possible. Should the landlord(s) fail to comply with these orders, these orders may be filed in the Small Claims Division of the Provincial Court and enforced as orders 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: June 14, 2016

Residential Tenancy Branch