



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 by way of conference call in response to the tenants' application for a Monetary Order to recover the balance of the security deposit and to recover the filing fee from the landlords for the cost of this application.

Service of the hearing documents, by the tenants to the landlords, was done in accordance with section 89 of the *Act*; served by registered mail on April 21, 2016. Canada Post tracking numbers were provided by the tenants in evidence. The landlords were deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant KJ appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlords, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

Are the tenants entitled to recover double the security deposit?

Background and Evidence

The tenant testified that this tenancy started on May 01, 2015 for a fixed term tenancy of 12 months. The tenancy was ended by mutual agreement prior to the year end. Rent for this unit was \$1,600.00 per month due on the 1st day of each month in advance. The tenant testified that they paid \$800.00 for the security deposit on May 01, 2015.

The tenant testified that they vacated the rental unit on March 31, 2016 and did not give the landlords written permission to keep all or part of the security deposit. The tenant testified that they attended the move out inspection with the landlord; however, the landlord did not bring the inspection report so only a walk through was conducted. At the end of the inspection, on March 31, 2016, the tenants provided the landlords with their forwarding address in writing. The tenant testified that this was followed up by email on April 12, 2016 when the tenants' forwarding address was confirmed again to the landlord.

The tenant testified that the landlord only returned \$725.00 of the security deposit on April 17, 2016 and deducted \$75.00 for an alleged toilet repair. The toilet repair was not mentioned at the move out inspection and the tenant was denied the opportunity to go back and see any damage the landlord alleged they had done to the toilet. The tenant seeks to amend their application and recover double the security deposit less the amount already returned.

Analysis

Section 38(1) of the *Residential Tenancy Act (Act)* says that a landlord has 15 days from the end of the tenancy or from the date that the landlord receives the tenant's forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If the landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Therefore, based on the above and the undisputed evidence presented I find that the landlord did receive the tenant's forwarding address in writing on March 31, 2016. As a result, the landlords had until April 15, 2016 to return all of the tenants' security deposit or file a claim to keep it. As the landlords failed to do so, the tenants have established a claim for the return of double the security deposit to an amount of **\$1,600.00**, pursuant to section 38(6)(b) of the *Act*. However, as the landlord did return **\$725.00** after the 15 day deadline then I have deducted this amount from the tenants' monetary award. There has been no accrued interest on the security deposit for the term of the tenancy.

The tenants are also entitled to recover the **\$100.00** filing fee from the landlords pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the tenants for the following amount:

Double the security deposit	\$1,600.00
Less amount returned	\$725.00
Plus the filing fee	\$100.00
Total amount due to the tenants	\$975.00

Conclusion

For the reasons set out above, I grant the tenants a Monetary Order pursuant to Section 38(6)(b) and 72(1) of the *Act* in the amount of **\$975.00**. This Order must be served on the Respondents and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondents fail to comply with the Order.

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: August 02, 2016

Residential Tenancy Branch

