



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by both tenants and the landlord.

At the outset of the hearing the landlord confirmed that he had served his evidence late to the tenants and the Residential Tenancy Branch. The tenants confirmed that the landlord had served the tenants through a third party and they did not receive the evidence until the weekend before the hearing.

I advised the parties that I could consider an adjournment request if the tenants were not prepared to proceed based on the late evidence submissions of the landlord. The tenants indicated they were prepared to proceed. I did not grant an adjournment.

Next the landlord requested that the tenants be ordered to not record the hearing. The landlord stated the tenants have a habit of recording these proceedings.

The tenants stated that in a previous hearing they had begun recording the proceeding but when the arbitrator advised them of the rule against recording they stopped. They also stated that they were not recording this hearing.

Without making any findings on whether or not the tenants were recording the proceeding I reminded the parties pursuant to Rule of Procedure 6.11 persons are generally prohibited from recording dispute resolution hearings. Prohibited recording includes any audio, photographic, video or digital recording.

Also at the start of the hearing the landlord submitted that the tenants have a habit of taking issues off topic and ask that they be directed they provide testimony only relevant to the issues being adjudicated.

After clarifying with the tenants that their Application for Dispute Resolution was seeking a monetary order for double the amount of the security deposit plus interest on the

deposit I advised both parties that the scope of the hearing was solely to determine if the landlord had complied with his obligations under the *Residential Tenancy Act (Act)* in regard to the disposition of the security deposit at the end of the tenancy.

I further explained that this meant that evidence or testimony regarding the condition of the rental unit at the end of the tenancy would not be relevant to the outcome of this decision.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a monetary order for double the amount of the security deposit plus appropriate interest and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on September 18, 2006 for a month to month tenancy beginning on October 1, 2006 for a monthly rent of \$1,100.00 due on the 1st of each month with a security deposit of \$550.00 paid by October 1, 2006.

The parties agreed the tenancy ended when the tenants vacated the rental unit on December 31, 2015. The parties also agreed the tenants provided the landlord with their forwarding address in writing on December 31, 2016. The landlord confirmed that he had not filed an Application for Dispute Resolution claiming against the security deposit as of the date of the hearing. Both parties confirmed the landlord had not returned any amounts to the tenants.

Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

Based on the testimony and evidence of both parties I find the tenancy ended on December 31, 2016 and that the landlord had the tenants' forwarding address in writing on the same date. As such, I find the landlord was required to either return the deposit or file an Application for Dispute Resolution with the Residential Tenancy Branch claiming against the deposit no later than January 15, 2016 in order to comply with Section 38(1) of the *Act*.

As per the landlord's own testimony I find the landlord has failed to comply with his obligations under the Section 38(1) and the tenants are entitled to double the amount of the deposit, pursuant to Section 38(6) of the *Act*.

In relation to the tenants' claim for interest on the deposit, I find the amount of interest owed is \$17.35. I have made this determination by using the deposit interest calculator on the Residential Tenancy Branch website.

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,217.35** comprised of \$1,100.00 double the amount of the security deposit; \$17.35 interest and the \$100.00 fee paid by the tenants for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be 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: October 05, 2016

Residential Tenancy Branch

