



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WALL FINANCIAL CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes mnsd, ff

Introduction

The tenants apply for the return of their security deposits, doubled, for the value of missed work, and to recover their filing fee.

The tenants both attended the hearing, and provided testimony. Two representatives for the landlord also attended and provided testimony. Both parties exchanged documentary evidence prior to the hearing. There are no issues related to service of these materials.

Issue(s) to be Decided

- Are the tenants are entitled to the return of the security deposit and pet damage deposit?
- Do the doubling provisions apply?
- Are the tenants entitled to recover loss from missing work from the landlord?
- Are the tenants entitled to recover their filing fee from the ;landlord?

Background and Evidence

This tenancy began February 1, 2016 and ended on June 30, 2016. The tenants paid a security deposit of \$940.00 and a pet damage deposit of \$400.00 at the start of the tenancy.

The tenants testified that only the female tenant attended the move-in inspection, and that a copy of the report from that inspection was never provided to them. When the tenancy ended, on June 29, 2016 they attended a move-out inspection, but left early because they felt threatened by the landlord's male manager and the maintenance manager who were both acting in a belligerent way. On that same date the tenants provided the female resident manager with a letter that included their forwarding address, which was witnessed by the maintenance manger. The tenants requested that another inspection occur with security present, but this was never accommodated by the landlord. On about August 26, 2016, the tenants received a cheque for \$745.00. There was no information included to indicate this was return of a portion of their security deposit.

The landlord's representatives testified that a move-in condition inspection was done with both tenants present, and both signed the report, and were given a copy of it on February 1, 2016. At the end of the tenancy, the tenants left part way through the inspection, therefore never signed the move-out report. The landlord's manager denied ever receiving a forwarding address from the tenants. He learned of their address when he received their application for dispute, and he then arranged the return to them of \$745.00, representing the balance of their deposits after deduction for damages to the unit. He submits the landlords are not liable for the tenants' loss of work to prepare for this hearing or their claim.

Analysis

For reference purposes, section 38 of the Residential Tenancy Act and Policy Guideline 17 govern the dispute at hand. In most situations, section 38(1) of the Act requires landlords, within 15 days of the end of the tenancy or the date on which the landlords receive the tenants' forwarding address, to either return the deposit or file an application to retain the deposit. If the landlord fails to comply with section 38(1), then the landlords may not make a claim against the deposit, and the landlords must pay the tenants double the amount of the security deposit (section 38(6)).

In the present case, the landlord has failed to prove to my satisfaction that the tenants were provided with a copy of the move-in condition inspection report. The landlord has provided no confirmation receipt signed by the tenants, or provided other supporting evidence of delivery. I therefore accept the testimony of the female tenant that the manager promised to provide a copy, but never followed through. Pursuant to section 38(5), the landlord's right to retain the security deposit is thereby extinguished.

The tenants failed to fully participate in a Condition Inspection at the end of the tenancy, having left before it was completed. I do not find compelling the male tenant's testimony that they had to leave because they were being threatened by the landlords. Accordingly, the tenants' right to recover their security deposit is extinguished pursuant to section 38(2).

I find that the landlord's were provided with the tenants' forward address in writing on June 29, 2016, when a letter including same was given to the female manager.

Finally, I find that the landlord has filed no claim as against the tenants, yet has returned only \$745.00 of the deposit to them, which was sent well after the 15 day period set out in section 38(1). In the absence of any claim, I have no jurisdiction to consider any alleged claim for damage to the premises by the tenants.

Policy Guideline 17 provides that in cases where both the landlords' right to retain and the tenants' right to the return of the deposit have been extinguished, the party who breached their obligation first will bear the loss. In this case, the landlords failed to give the tenants a copy of an inspection report done at the beginning of the tenancy, and therefore even though the tenants may not have fully taken part in the move out

inspection, the landlords are therefore precluded from claiming against the deposit because their breach occurred first.

The tenants have applied for double their security deposit. Although their right to the deposit was extinguished, as per the above paragraph, the landlords will “bear the loss” of failing to return the deposit. It is appropriate therefore that I order that the doubling provisions apply. The tenants are entitled to the return of their double the deposits (or \$2,680.00) less the \$745.00 already returned, for a balance owing of \$1,935.00.

The claim by the tenants for the loss of wages is dismissed. As noted by the landlord the Residential Tenancy Act provides me no jurisdiction over these types of “costs”. The only authority I have in this regard is regarding the filing fee. Furthermore, the tenants have provided no supporting evidence from employers, or any other proof that they actually lost employment income.

As the tenants are successful as to a portion their claim, I order that the landlord must pay them half of their filing fee in the sum of \$50.00.

Conclusion

The landlords shall pay to the tenants the sum of \$1,985.00.

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: February 17, 2017

Residential Tenancy Branch