



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlord confirmed receipt of the tenants' application for dispute resolution ('application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with copies of the tenants' application and evidence.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for the return of their security deposit pursuant to section 38 of the *Act*?

Are the tenants entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenants testified that this fixed term tenancy ended on April 31, 2016 when they had moved out of the rental home. Monthly rent was set at \$2,500.00, payable on the first of each month. The landlord had collected a security deposit in the amount of \$1,250.00 at the beginning of the tenancy, and continues to hold this deposit.

The tenants provided a forwarding address to the landlord, which was sent by registered mail to the landlord, in August of 2016. The tenants had received no reply from the landlord, nor did they receive a return of their security deposit. The tenants testified that the home was in good condition, and that a new tenant was moving in as they were moving out. No move in or move out inspections were completed, nor were any condition inspection reports provided.

The landlord testified that there was a discussion with the tenants about continuing this fixed term tenancy, but the tenants gave notice to the landlord a week before the end of the tenancy that they would not be continuing the tenancy. The landlord testified that she had posted the home for rent on Craigslist, and did not find a new tenant until six weeks later.

The landlord did not dispute the fact that she kept the tenants' deposit, stating that she retained the deposit as compensation for the lack of notice given by the tenants. The landlord testified that she suffered a monetary loss as a result of the move-out equivalent to two weeks of rent.

The tenants testified that they have not received a return of any portion of the security deposit, and did not give written authorization to allow the landlord to retain the security deposit.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenants' forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenants' security deposit plus applicable interest and must pay the tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenants' provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenants agree in writing the landlord may retain the amount to pay a liability or obligation of the tenants."

In this case, I find that the landlord had not returned the tenants' security deposit in full within 15 days of receipt of the tenants' forwarding address in writing. There is no record that the landlord applied for dispute resolution to obtain authorization to retain

any portion of the tenants' security deposit. The tenants gave sworn testimony that the landlord had not obtained their written authorization at the end of the tenancy to retain any portion of the tenants' security deposit.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

Unless the tenants has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenants' forwarding address is received in writing; ...*
- *whether or not the landlord may have a valid monetary claim.*

I also note that the landlord had failed to comply with sections 23 and 35 of the *Act* which requires the landlord to perform both move-in and move-out inspections, and fill out condition inspection reports for both occasions. The consequence of not abiding by these sections of the *Act* is that "the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished", as noted in sections 24(2) and 36(2) of the *Act*.

In accordance with section 38 of the *Act*, I find that the tenants are therefore entitled to a monetary order amounting to double the original security deposit with interest calculated on the original amount only. No interest is payable over this period. As the tenants have been successful in his application, I find that the tenants are also entitled to recover their filing fee from the landlord.

Conclusion

I issue a Monetary Order in the tenants' favour under the following terms which allows the tenants to recover the original security deposit plus a monetary award equivalent to the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*. The tenants are also entitled to recover the cost of the filing fee for this application.

Item	Amount
Return of Security Deposit	\$1,250.00
Monetary Award for Landlords' Failure to	1,250.00

Comply with s. 38 of the <i>Act</i>	
Recovery of Filing Fee	100.00
Total Monetary Order	\$2,600.00

The tenants are provided with this Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: March 27, 2017

Residential Tenancy Branch