



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OLC, FF (Tenant's Application)
 MNR, FF (Landlord's Application)

Introduction

This hearing convened as a result of cross applications. In the Tenants' Application for Dispute Resolution filed September 30, 2016, the Tenants requested an order that the Landlords comply with the *Residential Tenancy Act*, return of the security deposit paid and to recover the filing fee. In the Landlords' Application for Dispute Resolution filed December 6, 2016, the Landlords sought a Monetary Order for unpaid rent and recovery of the filing fee.

Only the Tenants appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant, L.S., testified that they served the Landlords with the Notice of Hearing and the Application on October 6, 2016 by registered mail. A copy of the registered mail tracking numbers are included on the unpublished cover page of this my Decision. The Tenant testified that J.S. signed for his registered mail package on October 7, 2016 and B.N. signed for her package on October 15, 2016.

Based on the Tenants' undisputed testimony I find the Landlords were duly served notice of this hearing and I proceeded with the hearing in their absence.

As the Landlords failed to attend the hearing, their application is dismissed without leave to reapply.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the Tenants' submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to return of double their security deposit?
2. Should the Tenants recover the filing fee paid.

Background and Evidence

L.L. testified that the tenancy began September 2014. Monthly rent was \$2,000.00 and the Tenants paid a security deposit in the amount of \$1,000.00.

L.L. further testified that the Landlords failed to do a move in condition inspection.

L.L. stated that the tenancy ended on September 1, 2016. On September 1, 2016 at 2:17 p.m. the Tenants sent the Landlords their forwarding address in writing by email. A copy of this email was provided in evidence. The Landlord, J.S., responded to this email confirming its receipt and writing that they would not be returning any portion of the security deposit.

L.L. testified that the Landlords also failed to do a move out condition inspection.

L.L. stated that they only moved five doors away and repeatedly asked to meet with the Landlords regarding their security deposit and the Landlords refused.

Analysis

The Tenants seek an Order that the Landlords comply with section 38 of the *Residential Tenancy Act* and return double their security deposit; section 38 provides as follows:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

I accept the Tenants undisputed evidence that they did not agree to the Landlords retaining any portion of their security deposit.

The Landlords failed to apply for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenants, to retain a portion of the security deposit, as required under section 38(1) of the *Act*.

By failing to perform incoming or outgoing condition inspection reports in accordance with the Act, the Landlords have also extinguished their right to claim against the security deposit for damages, pursuant to sections 24(2) and 36(2) of the *Act*.

The security deposit is held in trust for the Tenants by the Landlord. The Landlords may only keep all, or a portion, of the security deposit through the authority of the *Act*, such as the written agreement of the Tenants an Order from an Arbitrator. If the Landlords believe they are entitled to monetary compensation from the Tenants, they must either obtain the Tenant's consent to such deductions, or obtain an Order from an Arbitrator authorizing them to retain a portion of the Tenants' security deposit. Here the Landlords did not have any authority under the *Act* to keep any portion of the security deposit.

The Tenants are entitled to return of double the security deposit paid pursuant to section 38(6).

Consequently, I Order, pursuant to sections 38(6) and 67 of the *Act*, that the Landlords pay the Tenants the sum of **\$2,100.00**, comprised of double the security deposit (2 x \$1,000.00) and the \$100.00 fee for filing this Application.

Conclusion

The Tenants are given a formal Monetary Order in the amount of **\$2,100.00**. The Tenants must serve the Monetary Order on the Landlords as soon as possible. Should the Landlords fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

The Landlords failed to attend the hearing and their application is dismissed without leave to reapply.

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: April 03, 2017

Residential Tenancy Branch