



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* ("Act") for:

- authorization to obtain a return of double the amount of the security deposit, pursuant to section 38 of the *Act*; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

Both the landlords and the tenants appeared at the hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenants stated that they sent the landlords a copy of their Application for Dispute Resolution and evidentiary package via Canada Post Registered Mail on February 17, 2017. The landlords acknowledged receipt of the package. Pursuant to sections 88 and 89 of the *Act* the landlords are found to have been served with these packages.

Issue(s) to be Decided

Are the tenants entitled to a Monetary Order equivalent to double the value of the security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*?

Are the tenants entitled to a return of the Security Deposit?

Background and Evidence

The landlords testified that this tenancy began on September 1, 2016 and ended on December 31, 2016. Rent was \$1,900.00 per month and a security deposit of \$960.00 and a key deposit of \$200.00 continues to be held by the landlords.

The tenants and the landlords explained that the parties met on January 11, 2017 to perform a condition inspection report following the conclusion of the tenancy; however a

dispute broke out amongst the parties during this inspection and the tenants did not complete the inspection with the landlords.

Following this event, the landlords withheld the security and the key deposit for damage and loss identified during the condition inspection report.

The tenants are seeking a Monetary Order of \$2,120.00 as well as a return of the filing fee. This amount represents double the \$960.00 security deposit and a return of the \$200.00 key deposit.

Item	<u>Amount</u>
Return of Security Deposit (2 x 960.00)	1,920.00
Return of Key Deposit	200.00
Total =	\$2,120.00

Analysis

Section 38 of the *Act* requires the landlord to either return a tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy and or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a). A landlord may also under section 38(3)(b), retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator.

No evidence was produced at the hearing that the landlords applied for dispute resolution within 15 days of receiving a copy of the tenants' forwarding address or following the conclusion of the tenancy. If the landlords had concerns arising from the damages that arose as a result of this tenancy, the landlords should have applied for dispute resolution to retain the security deposit. It is inconsequential if damages exist, if the landlords do not take action to address these matters through the dispute resolution process. The landlords cannot decide to simply keep the security deposit as recourse for their loss.

While the landlords acknowledged that they kept the \$960.00 security and \$200.00 key deposits because of damages and losses they incurred, the landlords did not receive the tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a) of the *Act*, nor did they receive an order from an Arbitrator enabling them to do so.

Pursuant to section 38(6)(b) of the *Act*, a landlord is required to pay a monetary award equivalent to double the value of the security deposit. I am making a Monetary award in the tenants' favour in the amount of \$2,120.00 for the key and security deposits that have not been returned. As the tenants were successful in their application, they are entitled to recovery of the \$100.00 filing fee.

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$2,220.00 against the landlords. The tenants are provided with a Monetary Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords 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.

Item	<u>Amount</u>
Return of Security Deposit (2 x 960.00)	\$1,920.00
Return of Key Deposit	200.00
Recovery of Filing Fee	100.00
Total =	\$2,220.00

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: April 28, 2017

Residential Tenancy Branch