



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD OLC FF

Introduction

This hearing was convened as a result of the tenants' application for dispute resolution under the *Residential Tenancy Act* (the "*Act*"). The tenants applied for a monetary order for return of their security deposit, for an order directing the landlords to comply with the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenants and the landlords attended the teleconference hearing and gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions during the hearing.

The tenant confirmed having received the landlords' documentary evidence and that the tenant had the opportunity to review that evidence prior to the hearing. The tenants confirmed that they did not serve any documentary evidence on the landlords.

Preliminary Matter

During the hearing, the tenants confirmed that they were only seeking the return of their initial security deposit of \$750.00. The tenants were asked if they were waiving their right to double the return of their security deposit which they confirmed they were waiving as per Residential Tenancy Branch Policy Guideline 17.

Issues to be Decided

- Did the landlords breach section 38 of the *Act*?
- Are the tenants entitled to a monetary order for the return of their security deposit under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The parties agreed that a six month fixed term tenancy agreement began on April 1, 2015 and ended on September 30, 2016 when the tenants vacated the rental unit. The tenants paid a security deposit of \$750.00 at the start of the tenancy which has not been returned to the tenants.

During the hearing, there is no dispute that landlord J.F. confirmed receiving the tenants' written forwarding address on October 17, 2016 via regular mail. The landlords confirmed that neither of them have ever submitted an application to claim against the tenants' security deposit or returned the tenants' security deposit.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the landlords have breached of section 38 of the *Act*.

There was no evidence before me to support that the tenants had agreed, in writing, that the landlords could retain any portion of the \$750.00 security deposit, which has accrued no interest to date.

There was also no evidence to show that the landlords have applied for dispute resolution, within 15 days of October 17, 2016 which is the latter date between the end of tenancy date of September 30, 2016 and the date that the landlord J.F. confirms having received the tenants' written forwarding address on October 17, 2016.

The security deposit is held in trust for the tenants by the landlords. At no time do the landlords have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. The landlords may only keep all or a portion of the security deposit through the authority of the *Act*, such as an order from an arbitrator or the written agreement of the tenants. In the matter before me, I find the landlords did not have any authority under the *Act* to keep any portion of the security deposit and did not return any amount of the security deposit to the tenants within 15 days of October 17, 2016 in accordance with the *Act*.

Based on the testimony of the tenants and as noted above, I find that the tenants have waived their right to the return of double the security deposit under the *Act* by

specifically stating during the hearing that they are only seeking the return of their \$750.00 security deposit and to recover the cost of the filing fee.

Given the above, while I find the tenants are entitled to the return of their full security deposit of \$750.00, I also grant the tenants \$100.00 for the recovery of the cost of their filing fee as the tenants' application has merit.

I find the tenants are entitled to a monetary order pursuant to section 67 of the *Act*, in the amount of **\$850.00** comprised of \$750.00 for the return of their original security deposit plus the recovery of the cost of the \$100.00 filing fee.

Conclusion

The tenants' application is fully successful.

The landlords are cautioned to comply with section 38 of the *Act* in the future.

Pursuant to section 67 of the *Act*, the tenants are granted a monetary order in the amount of \$850.00. This order must be served on the landlords and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: June 30, 2017

Residential Tenancy Branch