



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 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 tenant, C.G.M. 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 tenant stated that she sent individual copies the Tenant's Application for Dispute Resolution and evidentiary package via Canada Post Registered Mail to the landlords on February 25, 2017. The landlords acknowledged receipt of these packages. 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 return of the filing fee?

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

Background and Evidence

The tenant testified that this tenancy began on August 1, 2015 and ended on January 31, 2016. Rent was \$875.00 per month and a security deposit of \$437.50 continues to be held by the landlords.

Both landlords and the tenant acknowledged that the parties did not meet to perform a condition inspection report following the conclusion of the tenancy. The tenant explained

that no condition inspection report was scheduled by the landlord at either the start or the conclusion of the tenancy. The tenant said that her husband cleaned the apartment as they were moving out and she returned the keys in an envelope to the landlords on January 30, 2017. She said that the envelope placed in the landlords mailbox with the keys, also contained the tenants' forwarding address on a sticky note.

The landlords acknowledged receiving the envelope containing the keys on January 31, 2017; however, they dispute the fact that the envelope contained the tenants forwarding address. The landlords did not dispute that they retained the tenants' security deposit, that a joint condition inspection was not carried out between the parties at the conclusion of the tenancy, and that they did not make an application to retain the tenants' security deposit. The landlords explained that they understood the tenants were aware of the level of cleanliness expected at the conclusion of the tenancy. The landlords argued that following the end of tenancy, the level of cleanliness present in the apartment was not acceptable and it was for this reason that they have retained the security deposit.

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 on January 31, 2017. While I acknowledge that the manner in which the tenants provided their forwarding address to the landlords is problematic, the landlords made no application within 15 days following the conclusion of the tenancy to retain the tenants' deposit. 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.

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 \$875.00 for the security deposit that has 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 \$975.00 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 Double Security Deposit (2 x 437.50)	\$875.00
Return of Filing Fee	100.00
Total =	\$975.00

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: August 1, 2017

Residential Tenancy Branch