



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD OLC FF

Introduction

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

- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38.
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72 of the *Act*.

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

The landlords confirmed receipt of the tenant's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlords were duly served with the Application. All parties confirmed receipt of each other's evidentiary materials.

Issues(s) to be Decided

Are the tenants entitled to monetary compensation for money owed under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to a monetary award for the return of their security deposit?

Are the tenants entitled to an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement?

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

Background and Evidence

This month-to-month tenancy began on December 1, 2014, with monthly rent set at \$750.00, payable on the first of the month. The landlords had collected a security deposit in the amount of \$375.00 at the beginning of the tenancy, and still hold that deposit. The tenants testified that they had moved out on July 30, 2017, while the landlords testified that the tenants moved out on July 31, 2017. Both parties confirmed that the tenants provided their forwarding address on August 1, 2017.

The tenants testified that they had left the suite in reasonably clean condition, and that they did not give permission for the landlords to retain any portion of their deposit. The landlords confirmed that they had not filed any applications to retain any portion of the tenants' deposit.

The landlords testified that they are entitled to keep the \$375.00 in compensation for the damage left by the tenants when they had moved out.

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 tenant's 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 tenant's 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 tenant's 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 tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, I find that the landlords 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 landlords had applied for dispute resolution to obtain authorization to retain any portion of the tenants' security deposit. The tenants gave sworn testimony

that the landlords had not obtained their written authorization at the end of the tenancy to retain any portion of the tenants' security deposit.

In accordance with section 38 of the *Act*, I find that the tenants are therefore entitled to the return of their security deposit, as well as compensation equivalent to the deposit for the landlords' failure to comply with the *Act*.

As the tenants have been successful in their application, I find that the tenants are also entitled to recover the filing fee from the landlords.

As this tenancy is now over, I am dismissing the tenants' application for the landlords to comply with the *Act*, regulation, or tenancy agreement.

Conclusion

I issue a \$850.00 Monetary Order in the tenants' favour under the following terms which allows the tenants to recover the security deposit retained by the landlords, plus a monetary award equivalent to the value of the deposit as a result of the landlords' 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	\$375.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	375.00
Recovery of Filing Fee	100.00
Total Monetary Order	\$850.00

The tenants are provided with this Order in the above terms and the landlord(s) must be served with a copy of this Order as soon as possible. Should the landlord(s) 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: February 23, 2018

Residential Tenancy Branch