



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF O

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The tenants applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for the return of their security deposit under the *Act*, to recover their filing fee and for other unspecified relief.

The tenants and the landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

Neither party raised any issues regarding the service of documentary evidence. As a result, I find the parties were sufficiently served in accordance with the *Act*.

Issues to be Decided

- Are the tenants entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?
- Are the tenants entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The parties agreed that the tenancy began on July 1, 2015 and that at the end of the tenancy, monthly rent was \$950.00 per month and due on the first day of each month. The parties also agreed that the tenants paid a total security deposit of \$475.00 and that the tenancy ended on June 30, 2017 when the tenants vacated the rental unit. The parties confirmed that no written incoming or outgoing condition inspection was completed during the tenancy.

The parties agreed that the tenancy ended based on a 2 Month Notice to End the Tenancy for Landlord's Use of Property dated April 21, 2017 ("2 Month Notice" and that the 2 Month Notice had an effective vacancy date listed as July 1, 2017. The tenants vacated the rental unit based on the 2 Month Notice as of June 30, 2017 and did not dispute the 2 Month Notice.

The landlord confirmed that he has not compensated the tenants the equivalent of one months' rent since issuing the 2 Month Notice nor has he returned the tenants' security deposit. The landlord confirmed that he received the tenants' written forwarding address on July 1, 2017. A copy of the tenants' written forwarding address was submitted in evidence by the tenants.

The tenants confirmed that they did not sign over any portion of their security deposit to the landlord and that they have not been served with any application from the landlord claiming towards their security deposit. The landlord confirmed this information.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

There is no dispute that the tenants vacated the rental unit on June 30, 2017 after being served in April 2017 with the 2 Month Notice. The landlord has failed to return the tenants' security deposit. Section 38 of the *Act* applies which states:

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.**

(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.

[My emphasis added]

The landlord 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, the landlord confirmed that he received the written forwarding address from the tenants on July 1, 2017 and did not file an application for dispute resolution claiming towards the tenants' security deposit and the landlord did not have any authority under the *Act* to keep any portion of the security deposit as the tenants did not authorize the landlord to retain any portion of their security deposit.

Given the above, I find the landlord breached section 38 of the *Act* by failing to return the tenants' security deposit in full or submitting an application claiming towards the tenants' security deposit within 15 days of receiving the forwarding address of the tenants in writing on July 1, 2017. Therefore, I find the tenants are entitled to the return of double their original security deposit of \$475.00, which as accrued no interest since the start of the tenancy, for a total of **\$950.00**.

As the tenants' claim had merit, I grant the tenants the recovery their filing fee in the amount of **\$100.00** pursuant to section 72 of the *Act*.

When a landlord serves tenants with a 2 Month Notice, section 52 of the *Act* applies and states:

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

[My emphasis added]

Therefore, as the landlord confirmed that he has not compensated the tenants since issuing the 2 Month Notice, I find the landlord owes the tenants **\$950.00** which is the equivalent of one month's rent as the landlord breached section 52 of the *Act*.

Based on the above, I find that the tenants have established a total monetary claim of **\$2,000.00** comprised of \$950.00 for double the tenant's original security deposit, plus the \$100.00 filing fee and \$950.00 for the 2 Month Notice compensation required under section 51 of the *Act*. I grant the tenants a monetary order pursuant to section 67 of the *Act*, in the amount of **\$2,000.00**.

I caution the landlord to comply with sections 38 and 51 of the *Act* in the future. In addition, **I caution** the landlord to comply with sections 23 and 35 of the *Act* in the future as an incoming and outgoing condition inspection report were not completed and the *Act* requires that both be completed in accordance with the *Act* and regulation.

Conclusion

The tenants' application is fully successful. The landlord has breached sections 38 and 51 of the *Act*.

The tenants have been granted a monetary order under section 67 in the amount of \$2,000.00 as described above. Should the landlord fail to immediately pay this amount to the tenants, the tenants must serve the monetary order on the landlord and the monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The landlord has been cautioned to comply with section 23, 35, 38 and 51 of the *Act* in the future.

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: February 13, 2018

Residential Tenancy Branch