



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for authorization to obtain a return of all or a portion of their security deposit pursuant to section 38.

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

The landlords confirmed receipt of the tenants' application for dispute resolution ('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 a monetary award for the return of their security deposit pursuant to section 38 of the *Act*?

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

Background and Evidence

Both parties confirmed that this fixed term tenancy began on August 1, 2016, and ended on July 31, 2017. Monthly rent was set at \$2,200.00, payable on the first of each month. The landlords had collected a security deposit in the amount of \$1,100.00 at the beginning of the tenancy, and returned \$400.00 to the tenants at the end of the tenancy.

Both parties confirmed in the hearing that the tenants had provided a forwarding address to the landlords on August 7, 2017.

The landlords did not dispute the fact that they had only returned \$400.00 to the tenants, stating that they kept the money for the purposes of removing wallpaper the tenants had applied, and repainting the home. The landlords did not apply to keep any portion of the security deposit, nor did the tenants provide written consent for the landlords to keep any portion of their security deposit.

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 tenants' 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 tenants' 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 tenants' 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 tenants agree in writing the landlord may retain the amount to pay a liability or obligation of the tenants."

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

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

Unless the tenants has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenants' forwarding address is received in writing; ...*
- *whether or not the landlord may have a valid monetary claim.*

In accordance with section 38 of the *Act*, I find that the tenants are therefore entitled to a monetary order amounting to double the original security deposit, less the \$400.00 returned to them.

Conclusion

I issue a Monetary Order in the tenants' favour under the following terms which allows the tenants to recover the portion of the security deposit retained by the landlords, plus a monetary award equivalent to the value of their security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*:

Item	Amount
Return of Security Deposit held by landlords	\$700.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	1,100.00
Total Monetary Order	\$1,800.00

The tenants are provided with this Order in the above terms and the landlords must be served with a copy of 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.

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 3, 2018

Residential Tenancy Branch