



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC OLC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A participatory hearing was held, via teleconference, on April 5, 2018. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- An order that the Landlord return all or part of the security deposit or pet damage deposit;
- An order that the Landlord comply with the *Act*, regulations, and/or a tenancy agreement;
- Compensation for loss or other money owed.

One of the Tenants, D.M., and the Landlord attended the hearing. All parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

During the hearing, the parties confirmed the Tenants vacated the rental unit on August 31, 2017. Accordingly, it is not necessary for me to consider their request for the following order:

- An order that the Landlord comply with the *Act*, regulations, and/or a tenancy agreement.

I dismiss this ground and will not be addressing it any further.

Issue(s) to be Decided

1. Are the Tenants entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?
2. Are the Tenants entitled to compensation for loss or money owed?

Background and Evidence

The parties confirmed the tenancy started on September 1, 2016, and a move-in inspection was done on that day. Both parties also agreed that the Tenants moved out of the rental unit on August 31, 2017. Both parties also agreed that the Tenants paid a security deposit of \$1,300.00.

Both parties agree that a final walkthrough was done in the rental unit on August 31, 2017. The Landlord stated that she did not bring a copy of the condition inspection report with her when she met the Tenants at the rental unit at the move-out inspection. The Landlord stated that she took the Tenants' word that the unit was clean (and didn't fully scrutinize it while the Tenants were present), and later discovered, after looking more closely, that the unit was still dirty. The Landlord stated that she didn't do an "actual inspection" until the Tenants had left. The Landlord stated that she filled out the condition inspection report a few days later. The Tenant stated that they never signed the move-out inspection report and does not agree that it was dirty.

The Landlord stated that she got the Tenants' forwarding address in writing on August 31, 2017, and mailed a cheque to the Tenants on September 4, 2017, in the amount of \$1,042.50. The Landlord stated that she kept \$257.50 from the \$1,300.00 security deposit to pay for the cost of cleaning, and the cost to apply for a review at this office. The Landlord stated that she filed an application with our office to retain the security deposit on September 3, 2017, but also stated that she cancelled this application in the days following.

The Tenant stated that she is looking for double the security deposit, the return of the cleaning fees the Landlord illegally withheld, and the cost she paid to file this application.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, both parties confirmed that the Tenants moved out of the rental unit on August 31, 2017, which I find reflects the end of the tenancy. The Landlord confirmed that she got the Tenants' forwarding address on August 31, 2017. Furthermore, the Tenants did not authorize any deductions from the security deposit. Therefore, the Landlord had until September 15, 2017, to either repay the security deposit (in full) to the Tenants or make a claim against it by filing an application for dispute resolution. Although the Landlord filed an application with this office on September 3, 2017, she also stated that she cancelled this application. In effect, I find this is the same as not filing any application against the Tenants' security deposit. By cancelling the application and not proceeding to a hearing, the Landlord did not receive any order or authority under the *Act* to retain a portion of the security deposit.

Both parties agree that the Landlord returned \$1,042.50 of the \$1,300.00 security deposit she held. However, I note the Tenants did not agree or authorize the Landlord to retain this amount, as they did not agree the unit was left dirty. I find no evidence that the Landlord had any right to retain any money from the security deposit she held, and in doing so without following through on her application to claim against the deposit in the amount of \$257.50, she breached section 38(1) of the *Act*.

Accordingly, as per section 38(6)(b) of the *Act*, I find the Tenants are entitled to recover double the amount of the security deposit (\$1,300.00 x 2), previously held by the Landlord, less the amount the Landlord has already given back. Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenants were successful in this hearing, I also order the Landlord to repay the \$100.00 fee the Tenants paid to make the application for dispute resolution.

In summary, I make the monetary order as follows:

Item	Amount
Return of Double security deposit (\$1,300.00 x 2)	\$2,600.00
Filing Fee	\$100.00
Less: Returned Portion of Security Deposit	(\$1,042.50)
Total Monetary Order	\$1,657.50

Accordingly, pursuant to section 67 of the *Act*, I grant the above monetary order based on the Landlord's failure to deal with the security deposit in accordance with section 38 of the *Act*.

Conclusion

I grant the Tenants a monetary order in the amount of **\$1,657.50**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenants may file the order in the Provincial Court (Small Claims) and be 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 6, 2018

Residential Tenancy Branch