



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing was held, by teleconference, on April 19, 2018. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- A monetary order for the return of the security deposit

Both parties were present at the hearing and provided testimony. Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The Landlord confirmed receipt of the Tenants' documentary evidence, application, and amendment. The Landlord stated he did not submit any evidence.

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

Issues 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 an order granting recovery of the filing fee?

Background and Evidence

The Tenants stated that the tenancy ended on August 18, 2017, the same day they did the move out inspection, and provided their forwarding address to the Landlord in

writing. The Tenants stated that the security deposit the Landlord held during their tenancy was in the amount of \$465.00, which is also corroborated by their documentary evidence. The Tenants stated that there is a space on the condition inspection report (provided into evidence) where they filled out their forwarding address in writing and gave this document back to the Landlord.

The Tenants stated the Landlord told them that once the move out inspection was completed, that they would get their deposit back. The Tenants stated that they never got the deposit back until October 5, 2017, after they filed an application for dispute resolution asking for double the security deposit, for breach of section 38 of the Act. The Tenants provided a copy of a bank statement showing that they got the \$465.00 back on October 5, 2017, but did not get double the security deposit.

The Landlord stated that there was a lot of turnover in the rental complex at the time the Tenants left the unit, and it was a mistake that they did not get their deposit back until October 5, 2017. The Landlord stated that once he was made aware that the deposit was not paid back to the Tenants, he took steps to return it as soon as he could. The Landlord feels the Tenants should have approached him and talked to him rather than file an application because if he was made aware that they were still waiting for the return of their deposit, he would have taken steps sooner.

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, the evidence confirmed the Landlord was in receipt of the Tenants' forwarding address in writing no later than August 18, 2017. Since the Tenants' vacated the rental unit on August 18, 2017, and a move-out inspection was completed on this date, I find this reflects the end of the tenancy.

Therefore, the Landlord had until September 2, 2017, to either repay the security deposit to the Tenants or make a claim against it by filing an application for dispute

resolution. The Landlord did neither and did not return the deposit until October 5, 2017. Accordingly, I find the Tenants are entitled to recover double the amount of the security deposit held by the Landlord ($2 \times \$465.00 = \930.00) less the amount already returned (\$465.00) pursuant to section 38(6) of the *Act*.

Pursuant to section 72 of the *Act*, and given the Tenants' were successful in their application, I award them recovery of the filing fee they paid for this application. Accordingly, pursuant to section 67 of the *Act*, I grant the Tenants a monetary order in the amount of \$565.00, which is due to the Landlord's failure to deal with the security deposit in accordance with section 38 of the *Act*, and \$100.00 in recovery of the filing fee.

Conclusion

I grant the Tenants a monetary order in the amount of \$565.00. 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 20, 2018

Residential Tenancy Branch