



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pocket Square Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FFT

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 the security deposit pursuant to section 38; and
- authorization to recover the tenants' filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given full opportunity to be heard, present evidence, and make submissions.

The tenant DM testified for the tenants. As a preliminary matter, SB stated he was the agent for the landlord whose name is properly "Pocket Square Holdings Ltd." (the *landlord*). The parties agreed that the documents in this proceeding be amended accordingly to reflect the correct name of the landlord.

The tenant testified the application for dispute resolution dated October 5, 2017 and all evidentiary materials were sent to the landlord by regular mail on October 5, 2017. The landlord testified he had received the documents although he could not recall the date.

Pursuant to sections 71(2), 88, 89 and 90 of the Act, I find the tenants' application package is deemed sufficiently served on the landlord on October 10, 2017.

Issue(s) to be Decided

- Are the tenants entitled to a monetary award equivalent to double the value of their security deposit because of the landlord's failure to comply with the provisions of section 38 of the Act?
- Are the tenants entitled to recover the filing fee of this application from the landlord?

Background and Evidence

The landlord and the tenants agree on the following. The parties signed a fixed term tenancy agreement on August 31, 2016 for a 12-month term from September 1, 2016 to August 31, 2017 at a rental of \$2,100.00 a month payable on the first day of each month.

On September 1, 2017, the tenant provided a security deposit in the amount of \$1,050.00 to the landlord. No condition inspection report was prepared at either the start or the end of the tenancy.

The tenants moved out of the unit on August 31, 2017. On September 12, 2017, the tenants provided notice in writing to the landlord of their forwarding address for the return of the security deposit. The landlord has returned a portion of the security deposit to the tenants in the amount of \$742.25 leaving a balance of \$307.75. The tenants have not provided written authorization that the landlord may retain any portion of the \$1,050.00 security deposit.

The landlord submits he is entitled to keep the balance of the security deposit as compensation for damages to the unit. The landlord provided no evidence he has filed an Application for Dispute Resolution seeking to retain any portion of the security deposit.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenants' security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenants' forwarding address in writing.

If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenants' written permission to keep all or a portion of the security deposit pursuant to section 38(4)(a).

I find that at no time has the landlord brought any proceedings with respect to nonpayment of rent nor has he brought an application for dispute resolution claiming against the security deposit for any outstanding rent or damage to the rental unit pursuant to section 38(1)(d) of the *Act*.

I accept the tenants' evidence they have not waived their right to obtain a payment pursuant to section 38 of the *Act* and that the landlord was given written notice of a forwarding address on September 12, 2017.

In addition, the tenant testified and the landlord agreed that no condition inspection report was prepared at the start or end of the tenancy as required under sections 23 and 35 of the *Act*. Section 24 of the *Act* outlines the consequences if reporting requirements are not met. The section reads in part:

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
...
(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Accordingly, I also find that the landlord has extinguished any right to claim against the security deposit for damage to the rental unit by failing to prepare a condition inspection report at the start and at the end of the tenancy.

Under these circumstances and in accordance with sections 38(6) and 72 of the *Act*, I find that the tenants are entitled to a Monetary Order of \$1,457.75 calculated as follows:

Security deposit	1,050
Doubling of security deposit under section 38(6)	1,050
Recovery of filing fee under section 72	100
Less amount paid by landlord	-742.25
Amount owing tenants by landlord	1,457.75

No interest is payable over this period.

Conclusion

I grant the tenants a monetary order pursuant to Section 67 in the amount of **\$1,457.75** as described above.

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: May 08, 2018

Residential Tenancy Branch