



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT, MNSD

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- a monetary order for compensation for loss or damage under the Act, regulation or tenancy agreement; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.

This hearing dealt with an application by the tenants for a monetary order for return of double the security and pet deposits paid to the landlord and for the return of the filing fee for the Application, under the Residential Tenancy Act (the "Act"). Only the tenants appeared at the hearing. The tenants provided affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The tenants testified and supplied documentary evidence that they served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on November 7, 2017. The tenants have provided tracking information from Canada Post indicating the mail had not been picked up and was returned back to the tenants. I find the landlord has been deemed served in accordance with sections 89 and 90 of the Act. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Are the tenants entitled to a monetary award equivalent to double the value of their security and pet deposits as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Are the tenants entitled to a monetary order for compensation for losses?

Are the tenants entitled to recover the filing fee for this application from the landlords?

Background, Evidence

The tenant's undisputed testimony is as follows. The tenancy began on June 1, 2015, and ended on September 5, 2017. The tenants were obligated to pay \$1980.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$940.00 security deposit and a \$564.00 pet deposit. The tenants testified that a written condition inspection report was conducted at move in but not at move out. The tenants testified that the landlord advised them to leave the keys in the mailbox at move out and that the move out inspection wasn't necessary. The tenants testified that they left their forwarding address in writing in the suite.

The tenants testified that they also sent it by regular mail and e-mail. The tenants testified that they moved out as a result of being given a 2 Month Notice to End Tenancy for Landlords Use of Property on July 30, 2017. The tenants testified that on August 26, 2017 the tenants gave 10 days' notice written notice that they would be moving as they are entitled to per the 2 month Notice. The tenants testified that they seek the return the pro-rated amount of rent they paid in advance for September 2017 of \$1650.00 (25 days x \$66.00 per day = \$1650.00). The tenants also seek the return of double their deposits of \$1504.00 x 2 = \$3008.00. The tenants also seek the recovery of the \$100.00 filing fee for this application. The tenants testified that they had to pay \$100.00 to do a property search to find an address for the landlords' as they had not provided one and seek the recovery of that cost. The tenants testified that they seek a return of \$200.00 as overpayment for a rent increase that wasn't in accordance with the Act.

The tenants request the following:

Item	Amount
Return of Pet Damage & Security Deposits (\$940.00+ \$564..00= \$1,508.00)	\$1,504.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	1,504.00
Overpayment of Rent	200.00
Return of unused rent September 6-30	1650.00
Address Search	100.00
Filing Fee	100.00
Total Monetary Order	\$5058.00

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the tenant, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The tenants stated that they are applying for the return of double the security and pet deposit as the landlords have not complied with the s. 38 of the *Residential Tenancy Act*.

Section 38 (1) says that 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.

And Section 38 (6) says 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

Based on the undisputed testimony of the tenant, the documentary evidence before me and in the absence of any disputing evidence from the landlord, I find that the landlord has not acted in accordance with Section 38 of the Act and that the tenant is entitled to the return of double his deposits in the amount of \$3008.00.

In addition, the tenants have provided extensive documentation to show that the landlord issued a 2 Month Notice to End Tenancy for Landlords Use of Property on July 30, 2018 and that the tenants gave 10 day's written notice, as they are entitled, and I find that they are also entitled to the unused portion of rent they paid in advance of \$1650.00.

The tenants have provided a receipt of what they allege is for tracking down the landlords address; however, the receipt lacks sufficient details to support that claim. The

receipt is very generic and does not provide the specifics needed to be successful in this claim; accordingly, I dismiss this portion of the tenants' application.

The tenants have not provided sufficient evidence to support their claim that they had been given a higher than allowable rent increase and had made an overpayment on the rent, accordingly; I dismiss this portion of their application.

The tenants are also entitled to the recovery of the \$100.00 filing fee.

Conclusion

The tenants have been successful in their application as follows:

Item	Amount
Return of Pet Damage & Security Deposits (\$940.00+ \$564..00= \$1,504.00)	\$1,504.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	1,504.00
Filing Fee	100.00
Return of unused rent September 6-30	1650.00
Total Monetary Order	\$4758.00

The tenants have established a claim for \$4758.00. I grant the tenants an order under section 67 for the balance due of \$4758.00. This order may be filed in the Small Claims 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: June 11, 2018

Residential Tenancy Branch