



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

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 landlord confirmed receipt of the tenants' application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenants' application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

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 recover the filing fee for this application from the landlord?

Background and Evidence

This month-to-month tenancy began on October 21, 2017, and ended on October 23, 2017. The tenants moved out as they rented the unit while living out of province, and were not satisfied with the conditions of the rental unit upon move-in. Monthly rent was set at \$1,550.00, payable on the first of each month. The landlord had collected a

security deposit in the amount of \$775.00 and a pet damage deposit in the same amount at the beginning of the tenancy, and continues to hold both deposits.

The tenants testified that a forwarding address was provided to the landlord in writing on October 31, 2017 by registered mail, but the tenants have not received any portion of their deposits back from the landlord. The tenants provided the tracking information in their evidence.

The landlord did not dispute the fact that she had kept the tenants' deposits. The landlord kept the deposits in compensation for the tenants' failure to comply with the *Act*.

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 tenant's 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 tenant's 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 tenant's 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 tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, I find that the landlord had not returned the tenants' security and pet damage deposits in full within 15 days of receipt of the tenants' forwarding address in writing. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenants' security deposit or obtained the written permission of the tenants to retain their deposits in full.

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 and pet damage deposit. As the tenants have been successful in their application, I find that the tenants are also entitled to recover the filing fee from the landlord.

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 and pet damage deposit retained by the landlord, plus a monetary award equivalent to the value of their deposits as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*. The tenants are also entitled to recover the cost of the filing fee for this application.

Item	Amount
Return of Security and Pet Damage Deposit	\$1,550.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	1,550.00
Recovery of Filing Fee	100.00
Total Monetary Order	\$3,200.00

The tenants are provided with this Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord 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: July 20, 2018

Residential Tenancy Branch