



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FF

Introduction

On June 21, 2018, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for a return of double the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “*Act*”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

The Tenants and the Landlord attended the hearing. All in attendance provided a solemn affirmation.

The Tenants advised that they served the Notice of Hearing package, including their evidence, to the Landlord by registered mail on June 25, 2018 and a receipt was provided to confirm service (the registered mail tracking number is provided on the first page of this decision). The Tenants stated the address that they sent the package to and the Landlord confirmed that this was his address. The Landlord advised that he was having difficulty with his mailbox due to thefts. The Tenants’ registered mail package went unclaimed and was returned to sender. In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Landlord was deemed to have received the Notice of Hearing package and evidence five days after it was sent by registered mail.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a return of double the security deposit?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

All parties agreed that the tenancy started on August 1, 2017 and the tenancy ended when the Tenants vacated the premises on April 22, 2018. Rent was established at \$1,500.00 per month due on the first day of each month. A security deposit of \$750.00 was also paid.

The Landlord stated that the property manager conducted a walk through of the rental unit with the Tenants; however, neither a move-in nor a move-out inspection report were ever completed.

The Tenants advised that they provided their forwarding address in writing by registered mail on June 1, 2018 to the same address as the Notice of Hearing package, and the Landlord confirmed that he received this letter.

The Landlord advised that he did not return the deposit in full or make an Application to keep the deposit within 15 days of receiving the forwarding address in writing as there was a dispute over a broken window. Submitted into evidence was a copy of a cheque dated July 21, 2018 with a remaining balance of the security deposit returned by the Landlord, less the cost of the window repair. He advised that he did not have the Tenants' written consent to keep any portion of the deposit.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit is extinguished if the Landlord does not complete the condition inspection reports. As the undisputed evidence is that the Landlord neglected to

complete a move-in or move-out inspection report, I find that the Landlord has extinguished his right to claim against the security deposit.

Section 38(1) of the *Act* requires the 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 in full 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 deposits, and the Landlord must pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the undisputed evidence before me, I am satisfied that the Landlord had the Tenants' forwarding address in writing five days after it was sent by registered mail on June 1, 2018. As the tenancy ended on April 22, 2018, I find that June 6, 2018 is the date which initiated the 15-day time limit for the Landlord to deal with the deposit. The undisputed evidence before me is that the Landlord extinguished his right to claim against the deposit. Furthermore, there is no provision in the *Act* which allows the Landlord to retain a portion of the deposit without authority under the *Act* or having the Tenants' written consent.

As the Landlord did not return the security deposit in full within 15 days of June 6, 2018, in essence illegally withholding the deposit contrary to the *Act*, I am satisfied that the Landlord breached the requirements of Section 38. As such, I find that the Tenants have established a claim for a monetary award amounting to double the original security deposit. Under these provisions, I grant the Tenant a Monetary Order in the amount of \$1,500.00; however, as the Tenants have received a cheque in the amount of \$131.35 already, I am reducing this monetary award accordingly. As such, I grant the Tenants a monetary award in the amount of **\$1,368.65**.

As the Tenants were successful in their claims, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenants

Item	Amount
Double the security deposit	\$1,500.00
Less amount returned already	-\$131.35
Recovery of Filing Fee	\$100.00
Total Monetary Award	\$1,468.65

Conclusion

I provide the Tenants with a Monetary Order in the amount of **\$1,468.65** in the above terms, and the Landlord must be served with **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: October 12, 2018

Residential Tenancy Branch