



Dispute Resolution Services

Page: 1

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

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The co-tenant MH primarily spoke on behalf of the two tenants (the "tenant"). The landlord DS primarily spoke on behalf of the co-landlords (the "landlord").

The landlord confirmed receipt of the tenant's application for dispute resolution dated April 4, 2018 and evidentiary materials. I find that the landlord was served with the tenant's hearing package in accordance with sections 88 and 89 of the *Act*. The landlord testified that they had served their evidence on the tenants by registered mail and hand delivery to the tenants' address. The tenant disputed receiving the landlords' materials. The landlord was unable to provide a Canada Post tracking number in support of their submission that they had sent the materials by registered mail. As I find there is insufficient evidence that the landlord served the tenants with the evidence in accordance with the *Act* I exclude the landlord's documentary evidence.

Issue(s) to be Decided

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

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

Background and Evidence

The parties agreed on the following facts. This tenancy began in November, 2017. The monthly rent was \$850.00 payable on the first of each month. The tenants paid a security deposit of \$250.00 and pet damage deposit of \$250.00 at the start of the tenancy. No written tenancy agreement was prepared and the parties did not prepare a condition inspection report at either the start or the end of the tenancy.

The tenants gave written notice to end the tenancy on February 1, 2018 providing a forwarding address with their notice. The tenants vacated the rental unit on February 28, 2018. The landlord testified that the tenants left the rental unit in an uninhabitable condition that required considerable cleaning and repairs. The landlords submit that due to the condition of the rental unit they withheld the security and pet damage deposit.

The tenants testified that they did not give written authorization that the landlords may retain any portion of the security or pet damage deposit.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit and pet damage 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 tenant's 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 and pet damage deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the deposits as per section 38(4)(a).

I accept the undisputed evidence of the parties that the tenants paid a security deposit of \$250.00 and pet damage deposit of \$250.00 for this tenancy. I accept the evidence that the tenants provided a forwarding address on February 1, 2018 and the tenancy

ended on February 28, 2018. The landlords did not return the deposits to the tenants within 15 days of the end of the tenancy nor did they file an application seeking authorization to retain the deposits.

I find the landlords' evidence regarding the condition of the rental unit, the damages and the cleaning and repairs required to be irrelevant to the matter at hand. The landlords have not filed an application for authorization to recover any cost of repairs from the security deposit. The undisputed evidence of the parties is that the tenants have not authorized the landlords to deduct any portion of the security deposit.

If the landlords had concerns about the condition of the rental unit at the end of the tenancy and sought to recover his losses from the security and pet damage deposit they ought to have filed an application for dispute resolution in accordance with the *Act*. A landlord cannot simply withhold deposits for a tenancy without following the appropriate legislative steps. I find that the landlords have failed to return the security deposit for this tenancy to the tenants without the tenants' authorization or filing an application to claim against the deposit.

The landlords are in the business of renting out living accommodations for value. They cannot do so in a haphazard manner without confirming with the legislative requirements. The parties gave evidence that the landlords failed to provide a written tenancy agreement and no condition inspection report was prepared at any time during the tenancy.

Section 36 of the *Act* provides that the right of a landlord to claim against a security deposit is extinguished if he does not comply with the requirements of section 35 in offering the tenant 2 opportunities for an inspection and completing a condition inspection report.

Based on the undisputed evidence before me, I find that the landlords have neither applied for dispute resolution nor returned the tenants' security and pet damage deposit in full within the required 15 days. I accept the tenants' evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlords' failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenants are entitled to an \$1,000.00 Monetary Order, double the value of the security and pet damage deposit paid for this tenancy. No interest is payable over this period.

As their application was successful the tenants may also recover the filing fee from the landlords.

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$1,100.00 against the landlords. The tenants are provided with a Monetary Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords 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 19, 2018

Residential Tenancy Branch