



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing dealt with an application by the tenants for a monetary order under the *Residential Tenancy Act* (the *Act*) for the following:

- A return of the security deposit under Section 38; and
- Reimbursement of the filing fee under Section 72.

Both tenants attended and provided affirmed testimony. The tenants were given the opportunity to make submissions as well as present oral and written evidence.

The landlord did not attend at the hearing. I kept the teleconference line open from the time the hearing was scheduled for twenty minutes to allow the landlord the opportunity to call. The teleconference system indicated only the tenants and I had called into the hearing. I confirmed the correct participant code for the landlord had been provided.

The tenants testified the landlord was served with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on February 4, 2018 and deemed received by the landlord under Section 90 five days later, on February 9, 2018. I find the landlord is served with the documents pursuant to Section 89 of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a monetary award equivalent to double the value of the security deposit because of the landlord's failure to comply with the provisions of Section 38 of the *Act*?

Are the tenants entitled to reimbursement of the filing fee under Section 72 of the *Act*?

Background and Evidence

The tenants provided affirmed testimony the tenancy began on May 1, 2017 for rent of \$950.00 a month payable at the first of the month. The tenants submitted a copy of the tenancy agreement. The tenancy ended on August 31, 2017.

The tenants provided a security deposit to the landlord at the beginning of the tenancy in the amount of \$475.00 which is held by the landlord. The tenants did not provide the landlord written authorization to retain the security deposit.

The tenants provided their forwarding address to the landlord in writing before they moved out of the unit. The tenants provided phone records and texts supporting their extensive efforts to obtain a return of the security deposit.

The tenants testified the landlord has not brought an application for dispute resolution with respect to the security deposit and continues to hold the security deposit.

Analysis

I have reviewed all evidence and testimony before me and will refer only the relevant facts and issues meeting the requirements of the rules of procedure.

The *Act* contains comprehensive provisions regarding security and pet damage deposits.

As stated in section 38 of the *Act*, the landlord is required 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 and receipt of the tenants' forwarding address in writing.

Section 38 states as follows:

38 (1) 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.

If that does not occur, the landlord must pay a monetary award equivalent to double the value of the security deposit.

Section 38(6) states as follows:

- (6) 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

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 the landlord has not brought proceedings for compensation or 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 find the tenants provided their forwarding address in writing pursuant to section 38(1)(b) and did not provide consent to the landlord to keep any portion of the security deposit pursuant to section 38(4)(a).

Based on the above, the testimony and evidence, and on a balance of probabilities, I find the landlord is in breach of the *Act* by failing to return the security deposit or applying for dispute resolution as required.

As the tenants were successful in this application, they are entitled to reimbursement of the filing fee pursuant to section 72.

I order that the landlord pay the tenants the sum of \$1,050.00.

The award to the tenants is summarized as follows:

ITEM	AMOUNT
Security Deposit	\$475.00
Double the Security Deposit	\$475.00
Reimbursement of the filing fee	\$100.00
Monetary Award Tenant	\$1,050.00

Conclusion

The tenants are issued a monetary order in the amount of \$1,050.00.

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: September 28, 2018

Residential Tenancy Branch