



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 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 parties attended the hearing and were given full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

The landlords acknowledged receipt of the Notice of Hearing and all evidentiary materials from the tenants. No issues of service were raised. I find the landlords were served in accordance with 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 landlords' 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 that the parties entered into a residential tenancy agreement starting May 1, 2014 and ending December 31, 2017. Rent was \$900.00 a month payable on the first of the month.

The parties agree the tenants provided a security deposit in the amount of \$675.00 to the landlords at the beginning of the tenancy which is still held by the landlords. On January 3, 2018, the tenants personally gave their forwarding address to the landlords. The tenants have not provided authorization to the landlords to withhold any of the security deposit.

No condition inspection was conducted on moving-in or moving-out. The landlords have not brought an application for a monetary order for damage or compensation with respect to the unit.

The landlords claim they are withholding the security deposit as compensation for damages to the unit. The tenants deny this claim.

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 landlords are 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 landlords have 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 landlords 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 landlords are 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.

Having made the above findings, I order that the landlords pay the tenants the sum of **\$1,450.00** calculated as follows:

ITEM	AMOUNT
Double the deposit (2 x \$675.00)	\$675.00
	\$675.00
Filing fee	\$100.00
Monetary Award	\$1,450.00

The landlords submitted evidence about the condition of the rental unit after the end of the tenancy.

However, the landlords are unable to make a monetary claim through the tenants' application. The landlords must file their own application to keep the deposit within the 15 days of certain events, as explained above.

The landlords may still file an application for alleged damages. However, the issue of the security deposit has now been conclusively dealt with in this hearing.

Having made the above findings, I order, pursuant to section 38 and 67 of the *Act*, that the landlords pay the tenants the sum of **\$1,450.00**.

Conclusion

I order the landlords pay to the tenants the sum of \$1,450.00 pursuant to sections 38 and 72 of the *Act*. The landlords must be served with a copy of this order as soon as possible. Should the landlords fail to comply with this order, the 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: September 1, 2018

Residential Tenancy Branch