



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDT, 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.

The tenant MM appeared on behalf of all tenants (“the tenants”). The landlord appeared with his wife PG (the “landlord”). Both parties were given full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

The landlord acknowledged receipt of the Notice of Hearing and all evidentiary materials from the tenants. No issues of service were raised.

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 that the parties entered a 3-year fixed term tenancy agreement commencing April 15, 2017 for monthly rent of \$1,800 payable on the last day of the month. The tenants provided a security deposit of \$900.00 at the start of the tenancy which is still held by the landlord.

The tenants provided 30 days notice in mid-July 2017 to the landlord of their intention to vacate the unit on August 15, 2017. A new tenant moved in to the rental unit on August 15, 2017. The new tenant subsequently caused damage to the property. The landlord claimed the tenants are responsible for this damage caused after they vacated as they, the tenants, recommended the new tenant.

The tenants provided the landlord with their forwarding address in writing by registered mail sent September 20, 2017. The tenant submitted the Canada Post tracking number in support of service. The landlord acknowledged receipt of the forwarding address although not until some time in January 2018.

The tenants did not agree in writing that the landlord could retain any amount of the security deposit. The landlord acknowledged he has not brought an application for dispute resolution to claim against the security deposit. No condition inspection took place on moving-in or moving-out.

The parties agreed the tenant owed the landlord \$282.00 for unpaid utilities. The tenants agreed this amount could be deducted from any monetary order made against the landlord.

Analysis

I have reviewed all evidence and testimony before me meeting the requirements of the rules of procedure. However, I refer to only the relevant facts and issues in this decision.

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

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1), the landlord must pay the tenant double the security deposit.

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.

Section 38(6)(b) 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

Based on the above, the testimony and evidence, and on a balance of probabilities, I find the landlord received the tenants' forwarding address on September 25, 2017 and as a result had until October 9, 2017, to either return the deposit in full or file an Application for Dispute Resolution seeking to claim against the deposit.

I find the landlord has not returned any portion of the deposit or brought proceedings for nonpayment of rent 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 landlord has not obtained the tenants' written permission to keep all or a portion of the security deposit pursuant to section 38(4)(a).

The landlord submitted evidence about the damage caused by the new tenant after the end of the tenancy. However, the landlord is unable to either retain any portion of the deposit unilaterally or make a monetary claim through the tenants' application. The landlord must file their own application to keep the deposit within the 15 days of certain events, as explained above.

As the landlord failed to comply with the requirements set out in Section 38(1), I find the tenants are therefore awarded double the security deposit, pursuant to Section 38(6), and reimbursement of the filing fee pursuant to section 72, less the amount of \$282.00, the amount the parties agreed is owing by the tenant for utilities, as follows:

ITEM	AMOUNT
Security Deposit	\$900.00
Security Deposit	\$900.00
Reimbursement of the filing fee	\$100.00
Less utility bill owed by tenants	(\$282.00)
Monetary Award Tenant	\$1,618.00

I accordingly order the landlord pay the tenants the sum of **\$1,618.00**.

Conclusion

I order the landlord pay to the tenants the sum of **\$1,618.00** pursuant to sections 38 and 72 of the *Act*.

The landlord must be served with a copy of this Order as soon as possible. Should the landlord 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 4, 2018

Residential Tenancy Branch