



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 tenants attended. The landlord SM attended on behalf of both landlords (“the landlords”). Both parties 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.

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 they entered into a residential tenancy agreement with the landlords starting July 15, 2016 for \$2,400.00 a month payable on the first of each month. The tenants stated they vacated the premises on November 30, 2017, although the landlords testified the date was December 2, 2017.

At the beginning of the tenancy, the tenants provided a security deposit in the amount of \$1,200.00 which is held by the landlords. The tenants testified they provided their forwarding address to the landlords by letter of December 29, 2017, sent by registered mail. A copy of the letter was submitted in evidence and the tenants provided the Canada Post tracking number.

The tenants stated they did not provide any written authorization to the landlords to retain any portion of the security deposit which remains with the landlords.

The landlords stated they did not bring an application for dispute resolution.

The landlords claimed outstanding utilities owed by the tenants and compensation for damages.

The tenants agreed that \$550.00 of any award be paid to the landlords as compensation for outstanding utilities. The landlords stated this amount was not adequate to meet the amount owing for utilities or as compensation for damages. The landlords testified that repairs to the rental unit after the end of the tenancy and the outstanding utilities owed were greater than the amount the tenants were agreeing to pay during the hearing.

Analysis

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

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

...

- (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 landlords received the tenants' forwarding address under section 90, on

January 3, 2018, five days after mailing. As a result, the landlords had until January 18, 2018 to file an Application for Dispute Resolution seeking to claim against the deposit. As the landlords failed to do so, I find the landlords are in breach of Section 38(1) of the *Act*.

As the landlords failed to comply with the requirements set out in Section 38(1), I find the tenants are therefore entitled to an award equivalent to double the security deposit, pursuant to Section 38(6) and reimbursement of the filing fee pursuant to section 72 as follows:

ITEM	AMOUNT
Security Deposit	\$1,200.00
Double the Security Deposit	\$1,200.00
Reimbursement of the filing fee	\$100.00
Monetary Award Tenant	\$2,500.00

As the tenants agreed the sum of \$550.00 be deducted for outstanding utilities, I grant the tenants a monetary order in the amount of **\$1,950.00** calculated as follows:

ITEM	AMOUNT
Monetary Award Tenant	\$2,500.00
(Less Amount for Utilities)	(\$550.00)
Monetary Order Tenants	\$1,950.00

The landlords submitted testimony about the condition of the rental unit needing repair after the end of the tenancy and outstanding utilities that were greater than the amount the tenants agreed to pay during the hearing.

The landlords are unable to make a monetary claim through the tenants' application pursuant to Rules of Procedures 2.1 which states as follows:

2.1 Starting an Application for Dispute Resolution

To make a claim, a person must complete and submit an Application for Dispute Resolution.

Therefore, 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 and outstanding utilities.

However, the issue of the security deposit has now been conclusively dealt with in this hearing.

Conclusion

I order the landlords pay to the tenants the sum of **\$1,950.00** 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 17, 2018 2018

Residential Tenancy Branch