



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

On June 27, 2018, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for a return of double the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “*Act*”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

The Tenants attended the hearing and the Landlord attended the hearing as well. All in attendance provided a solemn affirmation.

The Tenants advised that they served the Notice of Hearing package to the Landlord by registered mail on June 29, 2018 and the Landlord confirmed that she received this package. In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Landlord was served the Notice of Hearing package.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a return of double the security deposit?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the most current tenancy started on August 1, 2016 and the tenancy ended when the Tenants vacated the premises on May 26, 2018. Rent was established at \$3,250.00 per month due on the first day of each month. A security deposit of \$1,447.50 was also paid.

All parties agreed that the Landlord was provided with the Tenants' forwarding address in writing by email on May 26, 2018.

All parties agreed that the security deposit was not returned in full nor was an Application to keep the deposit made within 15 days of receiving the forwarding address in writing. As well, all parties agreed that the Landlord did return \$805.48 of the deposit on June 13, 2018; however, the Landlord did not have the Tenants' written consent to keep any portion of the deposit.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Based on the undisputed evidence before me, I am satisfied that the Landlord had the Tenants' forwarding address in writing on May 26, 2018. As the Tenants vacated the rental unit on this date as well, I find that this is the date which initiated the 15-day time limit for the Landlord to deal with the deposit. The undisputed evidence before me is that the Landlord did not return the security deposit in full within 15 days of May 26, 2018 or make an application to claim against the deposit.

Policy Guideline 17 is of relevance to the consideration of this Application and states:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;*
- *If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*
- *If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;*
- *If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

There is no provision in the *Act* which allows the Landlord to retain a portion of the deposit without authority under the *Act* or having the Tenants' written consent. As the undisputed evidence is that the Landlord illegally withheld a portion of the deposit contrary to the *Act* and breached the requirements of Section 38, I find that the Tenants have established a claim for a Monetary Order amounting to double the original security deposit. Under these provisions, I am awarding the Tenants \$2,895.00; however, as the Tenants have received a cheque of \$805.48, I am reducing this monetary award to \$2,089.52. As such, I grant the Tenants a monetary award in the amount of **\$2,089.52** in full satisfaction of this claim.

As the Tenants were successful in their application, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application.

With respect to the Landlord's references to her claims for compensation due to cleaning, repairs, and damage to the rental unit, these issues were not considered in the Application before me as the Landlord did not make her own Application to have these claims heard. As such, these claims remain open for the Landlord to file against the Tenants if she chooses to do so.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenants

Item	Amount
Double the security deposit less what was already returned	\$2,089.52
Recovery of Filing Fee	\$100.00
Total Monetary Award	\$2,189.52

Conclusion

I provide the Tenants with a Monetary Order in the amount of **\$2,189.52** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord 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: November 9, 2018

Residential Tenancy Branch