



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 the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlord confirmed receipt of the tenants' application for dispute resolution ('application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with copies of the tenants' application and evidence. The tenant indicated in the hearing that she was served with the landlord's evidence, which was not sent to her until November 22, 2018. The tenant confirmed in the hearing that she did have an opportunity to review this evidence, and did not have an issue with the admittance of the late evidence. Accordingly, the landlord's evidentiary materials were considered for this hearing.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for the return of their security deposit pursuant to section 38 of the *Act*?

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

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This month-to-month tenancy began on October 15, 2016 with monthly rent set at \$2,500.00, payable on the first of each month. The landlord had collected a security deposit and pet damage deposit in the amount of \$1,250.00 each deposit at the beginning of the tenancy, and continues to hold both deposits. A new tenancy agreement was signed by both parties in December of 2017, with rent reduced to \$2,450.00 per month.

This tenancy ended on June 30, 2018, and the tenants provided a forwarding address with their notice to terminate this tenancy in a letter dated April 30, 2018. A copy of this letter was submitted in the tenant's evidence.

The tenants testified that the landlord attempted to return only a portion of their deposits without their consent, and sent an e-transfer on July 16, 2018 in the amount of \$1,540.53, which they did not accept.

The landlord did not dispute the fact that he kept the tenants' deposits, stating that he retained the deposit as compensation for the losses associated with this tenancy. The landlord submitted a detailed evidentiary package in support of this claim, but did not file an application to retain any portion of the tenants' security deposit.

The tenants testified that they had agreed for the landlord to retain \$179.62 in satisfaction of a water bill, but did not consent to any further deductions.

The tenants also requested the recovery of the filing fee, as well as the cost of registered mail for this application.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenants' forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenants' security deposit plus applicable interest and must pay the tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenants' provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an

amount from a security or pet damage deposit if “at the end of a tenancy, the tenants agree in writing the landlord may retain the amount to pay a liability or obligation of the tenants.”

In this case, I find that the landlord had not returned the tenants’ security deposit in full within 15 days of the date this tenancy ended. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenants’ security deposit. It was undisputed by the landlord that he had not obtained their written authorization at the end of the tenancy to retain more than \$179.62 of their deposit, nor had he filed a formal application for dispute resolution to retain any portion of the tenants’ deposits.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch’s Policy Guidelines would seem to be of relevance to the consideration of this application:

Unless the tenants 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 tenants’ forwarding address is received in writing; ...*
- *whether or not the landlord may have a valid monetary claim.*

In accordance with section 38 of the *Act*, I find that the tenants are therefore entitled to a monetary order amounting to double the original security deposit and pet damage deposit, less the deduction the tenants had consented to. As the tenants’ application had merit, I also allow them to recover the filing fee for this application.

The tenants applied for further compensation from the landlord for the cost of registered mail. Section 72 of the *Act* only allows me to allow the tenants to recover the filing fee, and not the other associated costs of filing a dispute resolution application. Accordingly, I am not granting the tenants’ application for further compensation.

Conclusion

I issue a Monetary Order in the tenants’ favour under the following terms which allows for the return of their security deposit less the deduction they consented to, plus a monetary award equivalent to the value of their security deposit and pet damage deposit as a result of the landlord’s failure to comply with the provisions of section 38 of

the *Act*. The tenants are also entitled to recover the cost of the filing fee for this application.

Item	Amount
Return of Security Deposit and Pet Damage Deposit	\$2,500.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	2,500.00
Recovery of Filing Fee	100.00
Less Deduction Tenants consented to	-179.62
Total Monetary Order	\$4,920.68

The tenants are provided with this Order in the above terms and the landlord must be served with a copy of 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.

The remaining portion of the tenants' monetary application is dismissed without leave to reapply.

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: December 4, 2018

Residential Tenancy Branch