



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNSD

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to recover the filing fee for this application from the landlord;
- a monetary order for the return of double the value of the security deposit held in trust by the landlord.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to question one another. The parties acknowledged the exchange of evidence and stated there were no concerns with timely service of the hearing notice and both were prepared to deal with the matters of the application.

Issues to be Decided

- Is the tenant entitled to the return of double the value of their security deposit pursuant to Section 38 of the *Act*?
- Is the tenant entitled to recover the \$100.00 filing fee for this application from the landlord, pursuant to Section 72 of the *Act*?

Background and Evidence

The landlord and tenants agree that the tenancy began in February 2011 (prior to the date of written agreement entered into evidence) and ended on July 20, 2018. The monthly rent of \$730.00 was due on the first of the month and the landlord currently holds in trust a \$325.00 security deposit.

The landlord and tenants agree that the tenants provided their forwarding address in writing to the landlord on July 10, 2018.

The tenants testified that on July 20, 2018 they met with the landlord to give her the keys and participate in a move-out condition inspection. The tenants testified that the landlord looked around at the rental unit and said she would get back to the tenants with a move-out condition inspection report. The landlord testified that she did not complete a move-out condition inspection report. She noted that her spouse had recently died and she was ill.

The tenants and the landlord testified that the landlord did not contact the tenants about the return of their security deposit until August 8, 2018. When the parties spoke on this date, the landlord advised the tenant that she intended to withhold some amount of the security damage deposit; the tenants did not agree with this.

The landlord testified that the rental unit was left unclean, noting that the oven was very dirty and there was a lot of dust behind the fridge and stove. The tenants testified that they spent five days cleaning the unit, including the windows, and dispute that the unit was left unclean. They noted that in seven years of living in the rental unit, the landlord had not painted or otherwise done any work on the unit.

Analysis

The tenants provided their forwarding address on July 10, 2018 and the tenancy ended on July 20, 2018. Section 38(1) of the Act states the following:

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.

The landlord was required to return the \$325.00 security deposit fifteen (15) days after July 20, 2018, namely August 4, 2018, or make an application for dispute resolution to claim against the security deposit, pursuant to Section 38(1). The landlord has provided no evidence that they have returned any amount or made an Application to claim against the deposit at all. Therefore, I find the landlord has failed to comply with their obligations under Section 38(1).

Since the landlord has failed to comply with the requirements set forth in Section 38(1) and as per Section 38(6)(b) I find the landlord must pay the tenants double the amount of the security deposit. There is no interest payable on the security deposit.

Conclusion

The tenants are successful in her application and I award them the \$100.00 filing fee.

The landlord is ordered to pay \$650.00 to the tenants.

The tenants are provided with an order according to these terms. Should the landlord fail to comply with the 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: December 14, 2018

Residential Tenancy Branch