



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MNSD

Introduction

This hearing was convened in response to an application from the tenants pursuant to the *Residential Tenancy Act* (“*Act*”) for:

- a return of the filing fee pursuant to section 72 of the *Act*; and
- an order directing the landlords to return their security deposit pursuant to section 38 of the *Act*.

Both landlords and the tenants appeared at the hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlords acknowledged receiving the tenants’ application for dispute resolution while both parties confirmed receipt of each other’s evidentiary packages. All parties are found to have been duly served in accordance with the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a return of the security deposit? If so, should it be doubled?

Can the tenants recover the filing fee?

Background and Evidence

The tenants explained this tenancy began on November 1, 2016 and ended on July 31, 2018. Rent was \$1,350.00 per month and a security deposit of \$675.00 paid at the outset of the tenancy continues to be held by the landlords.

The landlords acknowledged they had retained the security deposit following the conclusion of the tenancy. The landlords also confirmed they had not applied to retain the security deposit and had not applied for a monetary award.

The landlords confirmed receipt of the tenants' forwarding address in writing after it was left on their counter with the keys to the rental unit on July 31, 2018. The landlords said they chose to withhold the security deposit because of a large number of issues that were discovered in the rental unit following the conclusion of the tenancy. The landlords said the unit was new when it was handed over to the tenants and they disputed the tenants' assertion that the unit was left clean.

Analysis

Section 38 of the *Act* requires a landlord to either return a tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the *later* of the end of a tenancy and upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a). A landlord may also under section 38(3)(b), retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator.

No evidence was produced at the hearing that the landlords applied for dispute resolution within 15 days of receiving a copy of the tenants' forwarding address on July 31, 2018, or following the conclusion of the tenancy on the same date. If the landlords had concerns arising from the damages that arose as a result of this tenancy, the landlords should have applied for dispute resolution to retain the security deposit. It is inconsequential if damages exist, if the landlords do not take action to address these matters through the dispute resolution process. A landlord cannot decide to simply keep the security deposit as recourse for loss.

While the landlords acknowledged the entire security deposit was retained, no evidence was produced at the hearing that the landlords received the tenants' written authorization to retain all, or a portion of the security deposit to offset damages or

losses arising out of the tenancy as per section 38(4)(a) of the *Act*, nor did the landlords receive an order from an Arbitrator enabling them to do so.

Pursuant to section 38(6)(b) of the *Act*, a landlord is required to pay a monetary award equivalent to double the value of the security deposit if a landlord does not comply with the provisions of section 38 of the *Act*. The tenants are therefore entitled to a monetary award in the amount of \$1,350.00, representing a doubling of the tenants' security deposit (2 x \$675.00).

As the tenants were successful in their application, they may recover the \$100.00 filing fee from the landlords.

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$1,450.00 against the landlords. The tenants are provided with a Monetary Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords 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: December 17, 2018

Residential Tenancy Branch