



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

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

- authorization to obtain a return of double the amount of the security deposit, pursuant to section 38;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord and the two tenants, male tenant ("tenant") and "female tenant," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. This hearing lasted approximately 42 minutes.

The hearing began at 1:30 p.m. with me and the landlord present. The tenants called in late at 1:38 p.m., stating that they thought the Residential Tenancy Branch would be calling them, not that they had to call in themselves. I informed the tenants about what occurred in their absence. The hearing ended at ended at 2:12 p.m.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application.

Issues to be Decided

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 a monetary order for compensation for damage or loss under the *Act*, Regulation or tenancy agreement?

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

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

The tenants stated that this month-to-month tenancy began on October 28, 2013. The landlord claimed that he purchased the rental unit sometime in 2014 and continued the tenants' tenancy. The tenants claimed that monthly rent in the amount of \$910.00 was payable on the first day of each month, while the landlord claimed that it was \$900.00. Both parties agreed that a security deposit of \$430.00 was paid by the tenants and the landlord continues to retain this deposit. The landlord claimed that a written tenancy agreement was signed by both parties, while the tenants disputed this. Both parties agreed that no move-in or move-out condition inspection reports were completed for this tenancy. Both parties agreed that a written forwarding address was sent by the tenants to the landlord on September 17, 2018, by way of a letter. Both parties agreed that the landlord did not have written permission to keep any amount from the tenants' security deposit. The landlord stated that he did not file an application for dispute resolution to retain any amount from the security deposit.

The landlord stated that the tenants vacated the rental unit on August 30, 2018, but they left possessions behind including groceries in the refrigerator, hangers and cleaning supplies, but not any furniture. The tenants stated they may have left a pack of empty garbage bags behind but they removed all of their possessions, including groceries, hangers and furniture. The tenants claimed that they left the country on August 26, 2018, but provided notice to the landlord to vacate by August 30, 2018. Both parties agreed that the tenants sent a text message to the landlord on July 30, 2018, indicating

that they were giving one month's notice to vacate the rental unit by the end of the August 2018.

The tenants seek a return of double the amount of the security deposit of \$430.00, totalling \$860.00, plus the \$100.00 application filing fee.

The tenants also seek \$48.00 for a bank charge for their returned cheque for September 2018 rent. They stated that the landlord did not return their post-dated rent cheques and cashed their September 2018 rent cheque without their knowledge or permission and they did not agree to pay for this, nor did they have money in their bank account to cover this cost. The tenants provided a copy of their online banking transactions for September 2018, which shows that their rent cheque of \$910.00 for September 2018 was returned for insufficient funds and they were charged an NSF fee of \$48.00 for that return. The landlord agreed that he cashed the tenants' September 2018 rent cheque because he was unable to rent the unit for September 2018, the tenants left possessions in the unit, and he had to clean and repair damages.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a 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 deposit. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings based on a balance of probabilities. I find that the tenancy ended on August 30, 2018. The tenants provided a written forwarding address by way of a letter on September 17, 2018, which was received by the landlord. The tenants did not give the landlord written permission to retain any amount from their deposit. The landlord did not return the deposit or file an application for dispute resolution to claim against the deposit. Further, the landlord's right to claim against the deposit for damages was extinguished for failure to conduct move-in and move-out condition inspections and reports, as required by sections 24 and 36 of the *Act*.

In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenants are entitled to receive double the value of their security deposit of \$430.00, totalling \$860.00.

I also award the tenants \$48.00 for the NSF fee they were charged by their bank for the September 2018 rent cheque that the landlord tried to cash. The parties did not sign a fixed term tenancy agreement and the tenants provided one month's notice on July 30, 2018 to vacate the rental unit, as required by section 45(1) of the *Act*, that was accepted by the landlord. They vacated the rental unit by August 30, 2018 and the landlord took back possession on that date. They did not live in the rental unit during September 2018. The landlord did not return the tenants' post-dated rent cheques, nor did he have permission from the tenants to cash their September 2018 rent cheque.

As the tenants were successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of \$1,008.00 against the landlord. 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: February 1, 2019

Residential Tenancy Branch