



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "*Act*") for an order that the landlord return the security deposit pursuant to section 38.

Both the tenant and the landlords attended the hearing. The landlords confirm they received the tenant's notice of hearing package and evidence by registered mail. The landlord has no issues regarding service of the notice of hearing documents. The tenant confirms receipt of the landlord's evidence and has no issue regarding service of it. I find the parties were served with their respective documents in accordance with section 89 of the *Act*. Although all evidence was taken into consideration at the hearing, only that which is relevant to the issues is referenced in this decision.

Issue(s) to be Decided

Should the security deposit be returned to the tenant?

Background and Evidence

The tenant testified the tenancy began on February 1, 2012 as a month to month tenancy with rent set at \$980.00 per month payable on the first day of each month. An incomplete copy of the tenancy agreement was entered as evidence by the tenant. The parties agree that when the tenancy commenced, a security deposit in the amount of \$500.00 was collected from the tenant which the landlord still holds. The tenant testified that no move-in condition inspection report was done at the beginning of the tenancy.

The tenant left the rental unit on October 7, 2018 after being served with a 2 month notice to end tenancy for landlord's use which indicated an effective (move-out) date of September 30, 2018. A copy of the 2 month notice was provided as evidence by the tenant. When he left the rental unit on October 7, 2018, no move-out condition inspection report was completed.

The parties agree that the tenant's mother notified the landlord of the tenant's forwarding address by email on October 7, 2018. A copy of the email was provided as evidence by the landlords.

The landlords testified that when the tenant moved out, the condition of the rental unit was inhabitable. The landlords submitted into evidence photographs of the state the rental unit after the tenant vacated. The landlords testified they spent thousands of dollars to bring the unit back to a liveable condition. A move-out condition inspection report was not done with the tenant because the landlords did not want to bring stress into the tenant's life by addressing the unacceptable living conditions with him.

The landlords submit that the security deposit should be used to cover the damage to the rental unit by the tenant.

Analysis

Section 38 of the *Act* addresses the return of security deposits.

- 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.

...

- (6) If a landlord does not comply with subsection (1), the landlord
 - (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The landlords do not dispute receiving the tenant's forwarding address in writing by email on October 7, 2018. The landlords did not file an application for dispute

resolution claiming against the security deposit and did not return it to the tenant within 15 days, or by October 22, 2018. As the landlords did not comply with section 38(1) of the *Act*, the landlords are required to pay the tenant double the amount of the tenant's \$500.00 security deposit, or \$1,000.00.

This decision does not preclude the landlords from filing their own application for dispute resolution to be compensated for any loss or damage resulting from this tenancy; I note the *Act* provides for a time limit on such claims.

Conclusion

I order that the tenant is entitled to a monetary order in the sum of \$1,000.00. I order that the landlord(s) pay this sum forthwith.

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 25, 2019

Residential Tenancy Branch