



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 an application by the tenants for a monetary order under the *Residential Tenancy Act* (the *Act*) for the following:

- A return of the security deposit under section 38.

Both tenants attended. The landlord attended. Both parties were given full opportunity to provide affirmed testimony, present evidence, cross examine the other party and make submissions.

The landlord acknowledged receipt of the Notice of Hearing and all evidentiary materials from the tenants. No issues of service were raised. I find the landlord was served pursuant to section 89.

Issue(s) to be Decided

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

Background and Evidence

The parties agreed they entered into a tenancy agreement which began on November 1, 2014 and ended on October 31, 2018; after the expiry of a fixed term, the tenancy's term was month-to-month. The tenants provided notice to the landlord in a letter dated September 11, 2018 that the tenants were vacating the unit at the end of October 2018; included in the letter was the tenants' forwarding address for the return of the security

deposit of \$575.00 provided at the beginning of the tenancy. The landlord acknowledged receipt of the letter on September 11, 2018 and the tenants' forwarding address.

The tenants have not authorized the landlord to retain any portion of the security deposit.

The landlord claimed outstanding utilities owed by the tenants and compensation for damages. The landlord submitted considerable evidence about the condition of the unit at the end of the tenancy.

Analysis

I have reviewed all evidence and testimony before me and will refer only to the relevant facts and issues meeting the requirements of the rules of procedure.

The *Act* contains comprehensive provisions regarding security and pet damage deposits.

As stated in section 38 of the *Act*, the landlord is required to either return the tenants' 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 receipt of the tenant's forwarding address in writing.

Section 38 states as follows:

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.

If that does not occur, the landlord must pay a monetary award equivalent to double the value of the security deposit.

Section 38(6) states as follows:

- (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*

However, this provision does not apply if the landlord has obtained the tenants' written permission to keep all or a portion of the security deposit pursuant to section 38(4)(a).

I find the landlord has not brought proceedings for compensation or an application for dispute resolution claiming against the security deposit for any outstanding rent or damage to the rental unit pursuant to section 38(1)(d) of the *Act*.

I find the tenants provided their forwarding address in writing pursuant to section 38(1)(b) on September 11, 2018, which the landlord acknowledged receiving that day. I find the tenants did not provide consent to the landlord to keep any portion of the security deposit pursuant to section 38(4)(a).

Based on the above, the testimony and evidence, and on a balance of probabilities, I find the landlord is in breach of the *Act* by failing to return the security deposit or applying for dispute resolution as required.

I award the tenants a monetary order in the amount of **\$1,150.00**. The award to the tenants is summarized as follows:

ITEM	AMOUNT
Security Deposit	\$575.00
Double the Security Deposit	\$575.00
Monetary Award Tenants	\$1,150.00

The landlord submitted testimony about the condition of the rental unit needing repair after the end of the tenancy and outstanding utilities owed by the tenants.

The landlord is unable to make a monetary claim through the tenants' application pursuant to *Rules of Procedures 2.1* which states as follows:

2.1 Starting an Application for Dispute Resolution

To make a claim, a person must complete and submit an Application for Dispute Resolution.

Therefore, the landlord must file his own application to keep the deposit within the 15 days of certain events, as explained above.

The landlords may still file an application for alleged damages and outstanding utilities.

However, the issue of the security deposit has now been conclusively dealt with in this hearing.

Conclusion

I order the landlord pay to the tenant the sum of **\$1,150.00** pursuant to sections 38.

The landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this 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: April 01, 2019

Residential Tenancy Branch