



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD FFT

Introduction

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

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38; and
- recovery of the filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant JN (the "tenant") primarily spoke on behalf of both co-tenants.

As both parties were present service of documents was confirmed. The parties each testified that they had been served with the other's materials. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy began in March 2018. A security deposit of \$490.00 was paid at the start of the tenancy. The tenancy ended May 31, 2019. The parties participated in a move-in inspection at the start of the tenancy and a move-out inspection at the end. The tenants did not agree with the landlord's assessment of the suite condition at the end of the tenancy and did not sign the move-out condition inspection report.

The tenants provided their forwarding address in writing on June 1, 2019 along with authorization that the landlord may retain \$148.84 of the security deposit. The tenants now seek a return of the balance of the security deposit in the amount of \$341.16.

The landlord submits that the rental suite required considerable cleaning and work at the end of the tenancy. The landlord submitted photographs of the rental suite and testified that the total costs incurred for cleaning and repairs exceeded the balance of the security deposit.

Analysis

Section 38 of the *Act* requires the landlord to either return the 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 or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must 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 permission to keep all or a portion of the security deposit as per section 38(4)(a).

I accept the undisputed evidence of the parties that a forwarding address was providing in writing on June 1, 2019 along with written authorization that the landlord may retain \$148.84 of the security deposit. I accept the evidence that no authorization was provided for the balance of \$341.16.

I accept the undisputed evidence that the landlord has not returned the balance of the security deposit nor have they filed an application to retain the deposit balance.

While the landlord made some submissions about the condition of the rental suite I find this information to be irrelevant to the matter at hand. Regardless of the state of the rental unit the landlord is not able to unilaterally retain the security deposit without the written authorization of the tenants or an order of the Branch. If the landlord believed that there were damages and losses attributable to the tenants they ought to have filed an application for authorization to hold the security deposit. A landlord may not simply withhold the deposit for a tenancy without taking the appropriate steps.

Based on the undisputed evidence before me, I find that the landlord has neither applied for dispute resolution nor returned the balance of the tenants' security deposit within the required 15 days from June 1, 2019. I accept the tenant's evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*.

Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenants are entitled to a \$682.32 Monetary Order, double the value of the balance of the security deposit held by the landlord without authorization. No interest is payable over this period.

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

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$782.32 against the landlord. The tenants are provided with a Monetary Order in the above terms and 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: September 16, 2019

Residential Tenancy Branch