



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

On August 25, 2019, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for a return of double the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “*Act*”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

Both Tenants attended the hearing. The Landlord also attended the hearing. All in attendance provided a solemn affirmation.

The Tenants advised that the Notice of Hearing and evidence package was served to the Landlord by registered mail on September 6, 2019 and the Landlord confirmed receipt of this package. In accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing and evidence package.

The Landlord advised that his evidence package was served to the Tenants by email on December 19, 2019 and by registered mail on December 23, 2019 and the Tenants confirmed receipt of this package. Service of this evidence did not comply with the timeframe requirements of Rule 3.15 of the Rules of Procedure; however, as the Tenants acknowledged receiving the package, reviewing it, and being prepared to respond to it, I have accepted this late evidence and will consider it when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a return of double the security deposit?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that the tenancy started on January 1, 2019 and the tenancy ended on May 31, 2019 when the Tenants gave up vacant possession of the rental unit. Rent was established at \$2,200.00 per month, due on the first day of each month. A security deposit of \$1,100.00 was also paid.

All parties agreed that a letter with the Tenants' forwarding address in writing was provided to the Landlord on or around June 18, 2019.

The Landlord advised that he sent the Tenants a cheque in the amount of \$758.22 on or around June 3, 2019 and he did not return the remaining \$341.78. This amount was used on a cleaning service for the rental unit as it was his belief that it was not left in a re-rentable state. He advised that he neither returned the remaining balance of the security deposit, nor did he file an Application for Dispute Resolution to claim against it. He stated that he did not have written consent from the Tenants to retain this amount, although it was his belief that he was entitled to based on a text message he had with the Tenants.

The Tenants advised that they had a discussion with the Landlord about the potential cost to clean the rental unit, but they did not agree to a specific amount or consent to any amount being deducted. They reiterated that they did not consent in writing to any amount being deducted from their security deposit.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

Section 38(4) of the *Act* permits the Landlord "to retain an amount from a security deposit or a pet damage deposit if at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant".

Based on the undisputed evidence before me, a forwarding address in writing was provided by the Tenant on or around June 18, 2019. I find it important to note that Section 38 of the *Act* clearly outlines that once a forwarding address in writing is received, the Landlord must either return the deposit in full **or** make an application to claim against the deposit. There is no provision in the *Act* which allows the Landlord to retain a portion of the deposit without the Tenants' written consent.

Regardless of the Landlord's belief that he had authorization in the text messages to withhold a portion of the Tenants' security deposit, the undisputed evidence is that the Tenants did not provide written authorization for the Landlord to keep any specific amount of the security deposit.

Furthermore, the undisputed evidence before me is that the Landlord did not return the balance of the security deposit in full or make an Application to keep this portion of the deposit within 15 days of June 18, 2019. As the Landlord illegally withheld a portion of the deposit contrary to the *Act*, and did not comply with the requirements of Section 38, I am satisfied that the Tenants should be granted a monetary award amounting to double the remainder of the original security deposit that was not returned. Under these provisions, I grant the Tenants a monetary award in the amount of **\$683.56**.

As the Tenants were successful in their claims, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenant

Doubling of the remainder of the security deposit	\$683.56
Recovery of filing fee	\$100.00
TOTAL MONETARY AWARD	\$783.56

Conclusion

The Tenants are provided with a Monetary Order in the amount of **\$783.56** 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: January 3, 2020

Residential Tenancy Branch