



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 tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of the remainder of the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

"Tenant DC" did not attend this hearing, which lasted approximately 20 minutes. The landlord and tenant KL ("tenant") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant confirmed that he had permission to represent tenant DC as an agent at this hearing (collectively "tenants").

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. The landlord confirmed that he did not serve any evidence for this hearing.

During the hearing, the tenant confirmed that he paid a \$150.00 deposit to purchase a car from the landlord, but he wanted the money back. He agreed that his request was not related to this residential tenancy. I notified both parties that since this claim was not tenancy-related, I did not have jurisdiction to hear it at this hearing. The tenants can pursue this claim in a Court of competent jurisdiction.

Issue to be Decided

Are the tenants entitled to a return of the remainder of their security deposit?

Background and Evidence

While I have turned my mind to the tenants' 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.

Both parties agreed to the following facts. This tenancy began on April 6, 2019 and ended on September 30, 2019. Monthly rent in the amount of \$650.00 was payable on the first day of each month. A security deposit of \$325.00 was paid by the tenants and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. A move-in condition inspection report was completed for this tenancy, but a move-out condition inspection report was not completed. The landlord did not file an application for dispute resolution to retain the tenants' security deposit. The landlord had permission to retain \$250.00 from the tenants' security deposit for rent.

The tenants seek a return of \$75.00 from their security deposit. The landlord disputes the tenants' application, stating that the tenants owed \$150.00 in rent and \$250.00 for a tire.

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)).

On a balance of probabilities, I make the following findings. The tenancy ended on September 30, 2019. The tenants did not indicate during the hearing or in their written

evidence whether they provided a written forwarding address to the landlord. I find that the tenants gave the landlords permission to retain \$250.00 from their security deposit. The landlord did not return the remainder of \$75.00 from the deposit to the tenants or make an application for dispute resolution to claim against the deposit.

In accordance with section 38 of the *Act*, I find that the tenants are entitled to receive the remainder of their security deposit of \$75.00. There is no interest payable on the deposit during the period of this tenancy. The tenants are provided with a monetary order for \$75.00.

I find that the tenants are not entitled to double the remainder of \$75.00 because they did not indicate whether they provided a forwarding address to the landlord. Despite this, I find that the landlord had ample opportunity to file an application to retain the deposit and that the landlord was in receipt of the tenants' application with their address contained on it. However, this is not a valid service method for the tenants' forwarding address, as per section 88 of the *Act*, so the doubling provision is not triggered under section 38 of the *Act*.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of \$75.00 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: January 21, 2020

Residential Tenancy Branch