



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

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

- authorization to obtain a return of double the tenants' security and pet damage deposits (collectively "deposits"), pursuant to section 38;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord, the landlord's two English language translators, the three tenants, and the tenants' lawyer attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord confirmed that his two English language translators had permission to assist him at this hearing. The tenants confirmed that their lawyer had permission to speak on their behalf at this hearing.

The hearing began at 9:30 a.m. with the landlord, the three tenants, the tenants' lawyer and I present. From 9:46 to 9:56 a.m., the landlord's first English language translator called into the hearing to assist the landlord. From 10:00 a.m. to 11:09 a.m., the landlord's second English language translator called into the hearing to assist the landlord. At 10:32 a.m., the landlord disconnected from the hearing but called back in immediately. The hearing ended at 11:09 a.m., after 99 minutes total.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package and the tenants' lawyer confirmed receipt of the landlord's evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly

served with the tenants' application and the tenants were duly served with the landlord's evidence.

Both parties confirmed that they had no objections and they were ready to proceed with the hearing.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants' application to correct the landlord's first name. Both parties consented to this amendment during the hearing.

Issues to be Decided

Are the tenants entitled to a return of double the value of their deposits?

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the 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 15, 2019. Monthly rent in the amount of \$4,000.00 was payable on the first day of each month. A security deposit of \$2,000.00 and a pet damage deposit of \$1,000.00 were paid by the tenants and the landlord continues to retain both deposits. A written tenancy agreement was signed by both parties. Move-in and move-out condition inspection reports were completed for this tenancy. The landlord received a written forwarding address from the tenants, by way of an email on March 30, 2020 and by way of the move-out condition inspection report on April 16, 2020. The landlord did not file an application for dispute resolution to retain any amount from the tenants' deposits. The landlord did not have written permission to keep any amount from the tenants' deposits.

The tenants' lawyer stated that the tenancy ended on March 31, 2020, while the landlord stated that he received the keys back from the tenants on April 16, 2020.

The tenants seek a return of double the amount of their deposits of \$3,000.00, totalling \$6,000.00. The landlord disputes the tenants' application.

The tenants seek \$1,100.00 for heat compensation. The landlord agreed, under oath, to pay this amount to the tenants during the hearing.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenants' deposits or file for dispute resolution for authorization to retain the deposits, 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 deposits. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the deposits 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 and for the reasons stated below, I make the following findings based on the testimony and evidence of both parties. I find that the tenancy ended on March 31, 2020, when the tenants moved out of the rental unit. I find that the tenants provided a written forwarding address by way of the move-out condition inspection report on April 16, 2020, in accordance with section 88 of the *Act*, which the landlord acknowledged he received. The tenants did not give the landlord written permission to retain any amount from the deposits. The landlord did not return the deposits or make an application for dispute resolution to claim against the deposits at all, or within 15 days of the later forwarding address date of April 16, 2020.

In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenants are entitled to receive double the value of their deposits of \$3,000.00, totalling \$6,000.00. There is no interest payable on the deposits during the period of this tenancy.

I award the tenants \$1,100.00 for heat compensation, as the landlord agreed, under oath, to pay this amount to them during the hearing.

As the tenants were successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of \$7,200.00 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: June 23, 2020

Residential Tenancy Branch