



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- an order for the landlords to return the security deposit (the 'deposit'), pursuant to section 38; and
- an authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the 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.

Issues to be Decided

Are the tenants entitled to:

1. an order for the landlords to return the deposit?
2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below. I explained

Rule of Procedure 7.4 to the attending parties; it is their obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on July 15, 2018 and ended on July 14, 2020. Monthly rent was \$1,500.00 due on the fifteenth day of the month. At the outset of the tenancy a deposit of \$750.00 was collected and the landlords still hold it in trust.

Both parties also agreed the tenants' forwarding address was provided in writing on July 14, 2020. A copy of the text message containing the forwarding address was submitted into evidence. The tenant authorized the landlords to retain \$114.00 from the deposit.

The landlord affirmed she did not return the deposit balance because the tenants caused damages to the rental unit.

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.

Based on the landlords' testimony, I find the landlords have not brought an application for dispute resolution claiming against the security deposit pursuant to section 38(1)(d) of the Act.

Pursuant to section 38 of the Act, the landlord must pay a monetary award equivalent to double the value of the security deposit:

- (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.

[...]

- 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.

Residential Tenancy Branch Policy Guideline 17 states:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;

- if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;

[...]

The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:

[...]

Example B: A tenant paid \$400 as a security deposit. During the tenancy, the parties agreed that the landlord use \$100 from the security deposit towards the payment of rent one month. The landlord did not return any amount. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount that remained after the reduction of the security deposit during the tenancy. In this example, the amount of the monetary order is \$600.00 ($\$400 - \$100 = \300; $\$300 \times 2 = \600).

I accept the undisputed testimony and documentary evidence that the tenancy ended on July 14, 2020, the tenants gave the landlords written notice of their forwarding address on that date, authorized the landlords to withhold \$114.00 from the deposit and that the landlords did not return the deposit balance in the amount of \$636.00.

Under these circumstances and in accordance with sections 38(6) and 72 of the Act and Policy Guideline 17, I find the tenants are entitled to a monetary award of \$1,272.00. Over the period of this tenancy, no interest is payable on the landlords' retention of the security deposit.

As the tenants application is successful, I award the tenants the return of the filing fee.

In summary:

ITEM	AMOUNT \$
Section 38(6) - doubling of \$636.00 security deposit (original \$750.00 deposit minus the authorized deduction of \$114.00)	1,272.00
Section 72 - Reimbursement of filing fee	100.00
TOTAL	1,372.00

Conclusion

Pursuant to sections 38 and 72 of the Act, I grant the tenants a monetary order in the amount of \$1,372.00

This order must be served on the landlords by the tenants. If the landlords fail to comply with this order the tenants may file the order in the Provincial Court (Small Claims) to be 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: November 25, 2020

Residential Tenancy Branch