



Dispute Resolution Services

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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* (the *Act*) for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

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

The landlord confirmed receipt of the tenants' application for dispute resolution ('application') and evidentiary materials. In accordance with sections 88 and 89 of the *Act*, I find that the landlord duly served with the tenant's application. The landlord did not submit any written evidence for this hearing.

Issues(s) to be Decided

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

Are the tenants entitled to a monetary order for compensation for money owed under the *Act*, regulation, or tenancy agreement?

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

Background and Evidence

This month-to-month tenancy began on April 1, 2012, and ended on July 31, 2020. The monthly rent was set at \$900.00, payable on the first of the month. The original landlord had collected a security deposit of \$400.00, and pet damage deposit in the amount of \$200.00, which were transferred to the new landlord when they took possession of the home in 2019.

The tenants moved out after being served with a 2 Month Notice for Landlord's Use on June 28, 2020. The tenants gave notice as allowed under the *Act* to move out before the effective date of the 2 Month Notice, and provided the landlord with their forwarding address in a letter dated July 20, 2020.

It was undisputed by both parties that the landlord returned the tenants' deposits by providing them with a cheque dated September 3, 2020, after the tenants had filed an application for dispute resolution on August 26, 2020. The tenants confirmed that they have yet to cash this cheque as they await the decision from this hearing. The landlord testified that they were busy, and had forgotten to return the tenants' security deposit, and that this was an innocent mistake. The tenants confirmed in the hearing that they have not given the landlord written permission to retain any portion of the deposits, nor has the landlord filed an application to retain their deposit.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit 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 return the tenant's security deposit plus applicable interest and must pay the tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or 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."

In this case, I find it undisputed that the landlord had failed to return the tenants' security and pet damage deposit within the required 15 days of them moving out. The tenants gave sworn testimony that the landlord had not obtained their written authorization at

the end of the tenancy to hold their deposits beyond the 15 days. In accordance with section 38 of the *Act*, I find that the tenants are therefore entitled to a monetary award in an amount equivalent to the original security and pet damage deposit. As the landlord had already issued a cheque for the original value of the security and pet damage deposits, I decline to make any order for the return of this amount. The tenants may deposit this cheque. In the event that this cheque has been cancelled, or is no longer valid, I order that the landlord provide the tenants with a replacement cheque for the return of their deposits in addition to the monetary award of \$600.00 for the landlord's failure to comply with the *Act*.

As the tenants were successful with this application, I find that the tenants are entitled to recover the filing fee for this application.

Conclusion

I issue a Monetary Order in the tenants' favour under the following terms which allows the tenants a monetary award equivalent to the value of their security and pet damage deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*. The tenants are also entitled to recover the cost of the filing fee for this application.

As the tenants had already been provided with a cheque for the return of their deposits, I decline to make any further orders for the return of the original deposits. However, if the cheque has been cancelled or is no longer valid, I order that the landlord provide the tenants with a replacement cheque in addition to the following monetary awards as noted in this decision.

Item	Amount
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	\$600.00
Return of original security and pet damage deposit of \$600.00	(already returned by way of cheque dated September 3, 2020)
Recovery of Filing Fee	100.00
Total Monetary Order	\$700.00

The tenants are provided with this Order in the above terms and the landlord must be served with a copy of 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: November 30, 2020

Residential Tenancy Branch