



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

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

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. 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 to be Decided

Are the tenants entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

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

Background, Evidence

The tenant's testimony is as follows. ST testified that the tenancy began on March 8, 2019 and ended on June 30, 2021. The tenants were obligated to pay \$1500.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$750.00 security deposit and a \$300.00 pet deposit. ST tenant testified that a written condition inspection report was conducted at move in but not at move out. ST tenant testified that at the move out condition inspection the landlord advised that they were retaining the security deposit. ML testified that they shampooed the carpets and cleaned the suite. ML testified that the landlord returned the \$300.00 pet deposit. The tenants request the return of their security deposit and the recovery of the filing fee.

The landlord gave the following testimony. The landlord testified that the tenants didn't clean the unit or the carpet, so she decided there was no point in doing the move out inspection report but did it later without the tenants present. The landlord testified that she was willing to resolve the matter, but the tenants refused.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the tenants, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claim and my findings around each are set out below.

Section 38 of the Act addresses the issue before me as follows.

Section 38 (1) says that 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.

And Section 38 (6) says 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.

In the landlord's own testimony, she confirmed that she did not have the tenant's permission to retain any of the deposit, or an order from an Arbitrator allowing her to retain it and that she had not filed an application at any time to seek to retain the deposit. Based on the above, I find that the landlord has not acted in accordance with Section 38 of the Act and that the tenants are entitled to the return of double their deposit as follows $\$750.00 \times 2 = \1500.00 .

The tenants are also entitled to the recovery of the \$100.00 filing fee.

Conclusion

The tenants have established a claim for \$1600.00. I grant the tenant an order under section 67 for the balance due of \$1600.00. This order may be filed in the Small Claims 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 25, 2022

Residential Tenancy Branch