



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFT MNSD

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; 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 their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenants' dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord duly served with the Application. All parties confirmed receipt of each other's evidentiary materials.

Issue(s) to be Decided

Are the tenants entitled to the return of all or a portion of their security deposit?

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

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on November 1, 2020, and ended on October 31, 2021. Both parties confirmed that the tenants provided their forwarding address on November 2, 2021. Monthly rent was set at \$1,250.00, payable on the first of the month. The landlord continues to hold the \$625.00 security deposit as well as a \$500.00 pet damage deposit.

The tenants filed this application as the landlord had not returned any portion of their deposits to them. The tenants testified that the landlord did not file an application, nor did the tenants give permission to the landlord to retain any portion of their deposits.

The landlord does not dispute that they had retained the deposits, but did so because of the amount of damage caused by the tenants.

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 tenants' 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 tenant 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 kept the tenants' security and pet damage deposits. There is no record that the landlord had applied for dispute resolution to obtain authorization to retain any portion of the tenants' deposits. The tenants gave sworn testimony that the landlord had not obtained their written authorization at the end of the tenancy to retain any portion of their deposits. In accordance with section 38 of the *Act*, I find that the tenants are therefore entitled to a monetary order in an amount equivalent to the original security and pet damage deposits plus the return of the remaining portion of their deposits.

As the tenants were successful in their claim, I find the tenants are entitled to recover the cost of the filing fee for this application.

Conclusion

I issue a Monetary Order in the tenants' favour under the following terms which allows the tenants to recover their security and pet damage deposit, plus a monetary award equivalent to the value of their deposits as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*. I find the tenants are also entitled to \$100.00 for recovery of the filing fee for this application.

Item	Amount
Return of Security and Pet Damage Deposit	\$1,125.00
Monetary Award for Landlord's Failure to Comply with s. 38 of the <i>Act</i>	1,125.00
Recovery of Filing Fee	100.00
Total Monetary Order	\$2,350.00

The tenant(s) 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: February 07, 2022

Residential Tenancy Branch