



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

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

- a monetary order as compensation for loss or damage under the Act, regulation, or tenancy agreement pursuant to section 67 of the Act.

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 order for the landlord's failure to return the security and pet deposit?

Background, Evidence

Both parties agreed to the following. The tenancy began on October 1, 2014 and ended on August 6, 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 \$750.00.00 security deposit and a \$539.00 pet deposit.

The tenants gave the following testimony. The tenants testified written condition inspection reports were not conducted at move in or move out. was conducted at move in. The tenants testified that they provided their forwarding address by registered mail in August 2021. The tenants are seeking the return their deposits.

The landlord gave the following testimony. The landlord testified that the tenants left the unit damaged and dirty and that the costs to address that far exceed the deposits. The landlord felt it was appropriate for him to retain the deposits.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the tenant, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below. For absolute clarity, I confirmed that both parties were aware that the issue that I would be addressing is the security and pet deposit. The landlord was very clear that he understood what the issues of this hearing were. In addition, it was explained in great detail to the landlord that any outstanding issues between the parties could be addressed in a separate hearing if necessary. Both parties indicated that they understood.

The tenant said he is applying for the return of double the security deposit as the landlord has not complied with the s. 38 of the *Residential Tenancy Act*.

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.

The landlord confirmed that he did not obtain the tenants written authorization to retain any portion of the deposits. The landlord also confirmed that he received the tenants forwarding address on August 31, 2021 and that he did not file an application within 15 days of receiving the tenants forwarding address as required and noted above. Based on the above, I find that the landlord has not acted in accordance with Section 38 of the Act and that I must award the tenants the return of double their deposits in the amount of \$1289.00. x 2 = \$2578.00

Conclusion

The tenant has established a claim for \$2578.00. I grant the tenants an order under section 67 for the balance due of \$2578.00. 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: May 19, 2022

Residential Tenancy Branch