



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenants' request for return of double the security deposit and recovery of the filing fee. Only one of the named landlords appeared at the hearing and three tenants appeared. The landlord asserted that the other landlord was not served with notification of this hearing. The tenants claimed the other landlord was served by registered mail. It is upon the applicant to prove service of the hearing package upon each named respondent. I do not find sufficient evidence to find the female landlord was served with the hearing package and I amend the application, decision and accompanying order to reflect the name of the male landlord only.

Tenant C stated that she was satisfied with the partial refund of the security deposit she received and this application pertains only to the two-thirds of the security deposit not returned to Tenant A and B. In light of this understanding, I amend the application, decision and accompanying order to reflect the names of the two tenants who claimed they did not receive return of the security deposit.

Issues(s) to be Decided

1. Are the tenants entitled to return of double the security deposit and if so, the amount?
2. Award of the filing fee.

Background and Evidence

The parties agreed that a co-tenancy agreement commenced with three co-tenants (herein referred to as Tenant A, Tenant B and Tenant C) on September 1, 2006. At the commencement of the tenancy agreement a \$675.00 security deposit was paid to the

landlord. The tenants acknowledged that their application erroneously refers to payment of a \$725.00 security deposit.

Tenant A moved out of the rental unit September 1, 2007 without proper written notice to the landlord while Tenant B and C remained and another occupant moved in. A tenancy was not formed with the occupant. Tenant B gave notice to end the tenancy January 31, 2008 effective March 1, 2008 and provided her forwarding address on the notice. Tenant B wrote to the landlord in June or July 2008 demanding return of double the security deposit but the landlord indicated the security deposit would remain in trust until Tenant C vacated. Tenant C vacated the rental unit February 1, 2009 and received \$175.00 of the security deposit, calculated as one-third of the \$675.00 security deposit less \$50.00 for cleaning.

After Tenant C vacated, Tenant B wrote the landlord February 20, 2009 and provided her forwarding address again as well as a forwarding address for Tenant A. The letter of February 20, 2009 was mailed to the landlord and the landlord acknowledged receiving it. The landlord claimed that he was in communication with the tenant and wanted to make deductions for cleaning and return the remainder of the security deposit but that the tenant would not respond to the landlord's proposal. The landlord did not file an Application for Dispute Resolution to retain all or part of the security deposit.

I heard the landlord participated in a move-out inspection but did not prepare a move-out inspection report. I did not hear evidence that the tenants had provided the landlord with written consent to retain any portion of the security deposit. The landlord asserted that he was not withholding the security deposit, but rather was trying to reach an agreement with the tenants in the time that passed after receiving the letter of February 20, 2009.

The tenants filed this application on April 3, 2009. The landlord submitted as evidence the notice to end tenancy received from Tenant B dated January 31, 2008; the letter of February 20, 2009 and a copy of a cheque paid for carpet cleaning in February 2009. The written tenancy agreement was not provided by either party.

Analysis

Section 38 of the Act provides for the return of security deposits. The Act permits a landlord to obtain a tenant's written consent for deductions for damages if the landlord meets the move-in and move-out inspection report requirements provided in the Act. In this case, I find the landlord had not met the inspection report requirements and he extinguished his right to obtain consent for deductions from the security deposit for damages. Therefore, in accordance with section 38(1) of the Act, the landlord was required to either return the security deposit to the tenants or make an application for dispute resolution claiming against the security deposit within 15 days from the later of the day the tenancy ended or the date the landlord received the tenants' forwarding address in writing. Where a landlord does not comply with section 38(1), section 38(6) of the Act provides that a landlord must pay the tenant double the security deposit.

Based on the documentation provided as evidence, I am satisfied that the landlord had the Tenant B's forwarding address in writing when she gave written notice to end tenancy on January 31, 2008 and the tenancy ended March 1, 2008. Even if the parties had an agreement to wait until Tenant C had vacated the rental unit to deal with the security deposit, it is clear that the landlord was provided a forwarding address for both Tenant A and B after Tenant C had vacated by way of the letter mailed to the landlord February 20, 2009. Pursuant to section 90 of the Act, the letter is deemed to be given to the landlord five days later on February 25, 2009.

In making this application on April 3, 2009 more than 15 days had passed since the landlord received the tenants' forwarding addresses and since the landlord did not return all of the security deposit or make an application to retain it, the tenants are entitled to return of double the security deposit. The tenants are also entitled to interest on the original amount of the deposit.

In recognition of Tenant C consenting to a deduction of \$50.00 during the hearing and the parties indicating that this hearing pertained to only the two-thirds of the security deposit not refunded, I award Tenant A and Tenant B as follows:

Two-thirds of security deposit not returned	\$ 450.00
Double security deposit not returned	450.00
Accrued interest	21.59
Filing fee	<u>50.00</u>
Monetary Order for tenants	<u>\$ 971.59</u>

The tenants must serve the enclosed Monetary Order upon the landlord and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The tenants were successful in establishing they are entitled to return of double of the security deposit not refunded. The tenants have been provided a Monetary Order in the amount of \$971.59 to serve upon the landlord.



Dispute Resolution Services

Page: 5

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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: July 07, 2009.

Dispute Resolution Officer