



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing was convened as a result of the tenants' application for dispute resolution under the *Residential Tenancy Act* (the "*Act*"). The tenants applied for a monetary order for double the return of their security deposit under the *Act*, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenants and the landlords attended the teleconference hearing and provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions during the hearing. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

The digital video evidence on DVD was not considered as the landlords stated that they did not receive a copy of the DVD from the tenants contrary to the Rules of Procedure. The landlords' documentary evidence was excluded in full as the landlords confirmed that they did not serve the tenants as required by the Rules of Procedure.

Preliminary and Procedural Matter

During the hearing, the tenants requested to withdraw their request for the cost of carpet cleaning in the amount of \$250.00. I find that such a request does not prejudice the landlords as it results in a reduction of the tenants' monetary claim. As a result, I permitted the tenants to withdraw the \$250.00 portion of their monetary claim relating to the carpet cleaning and will not consider that further in this decision.

Issue to be Decided

- Are the tenants entitled to the return of double their security deposit under the *Act*?

Background and Evidence

The parties agreed that a fixed term tenancy began on June 28, 2015 and reverted to a month to month agreement after June 30, 2016. The tenancy ended on August 1, 2016, the date the keys were returned to the landlords by the tenants. The tenants paid a \$650.00 security deposit at the start of the tenancy which has accrued \$0.00 in interest.

The parties agreed that the tenant's provided their written forwarding address to the landlords on the outgoing condition inspection report dated July 31, 2016. The parties also agreed that the tenants did not give the landlords permission to retain any portion of their security deposit and the landlords confirmed that they did not submit an application to claim against the tenants' security deposit under the *Act*.

The parties both confirmed during the hearing that the landlords issued a cheque to the tenants dated September 9, 2016 in the amount of \$452.50 which the tenants cashed. During the hearing, the tenants confirmed that they were not waiving their right to double the security deposit if they were so entitled under the *Act*.

Analysis

Based on the above, the evidence of the parties, and on a balance of probabilities, I find the following.

Tenants' claim for the return of double the security deposit – I accept that the landlords returned \$452.50 of the tenants' \$650.00 security deposit. There was no evidence before me to show that the tenants had agreed, in writing, that the landlords could retain any portion of the security deposit, which has accrued no interest to date. There was also no evidence before me to show that the landlords had applied for dispute resolution to claim towards any portion of the security deposit within 15 days of August 1, 2016, which is the latter of the two dates between the July 31, 2016 condition inspection report containing the written forwarding address of the tenants and the end of tenancy date on August 1, 2016, the date the keys were returned to the landlords by the tenants.

The security deposit is held in trust for the tenants by the landlords. At no time do the landlords have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. The landlords may only keep all or a portion of the security deposit through the authority of the *Act*, such as an order from an arbitrator, or the written agreement of the tenants. In the matter before me, I find the landlords did not have any authority under the *Act* to keep any portion of the security deposit and did not return the full security deposit to the tenants within 15 days in accordance with the *Act*. Section 38 of the *Act* applies which states:

Return of security deposit and pet damage deposit

38 (1) 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.

(6) 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.

[my emphasis added]

In the matter before me, I find that the landlords breached section 38 of the *Act* by failing to return the tenants' security deposit in full to the tenants within 15 days of

August 1, 2016 having not made a claim towards the security deposit, and by not having the written permission of the tenants to retain any portion of the security deposit.

Given the above, I find the tenants are entitled to the return of double the original security deposit of \$650.00 for a total of \$1,300.00. There is no dispute that the tenants did eventually receive \$452.50 from the landlords, albeit late and beyond the legislated timeline. As a result, I will deduct \$452.50 from the tenants' \$1,300.00 monetary award leaving a balance owing by the landlords to the tenants in the amount of **\$847.50**.

Monetary Order – I find that the tenants have established a total monetary claim in the amount of **\$847.50** as described above. Therefore, I grant the tenants a monetary order pursuant to section 67 of the *Act* for the balance owing by the landlords to the tenants in the amount of \$847.50.

I caution the landlords to comply with section 38 of the *Act* in the future.

Conclusion

The tenants' application is successful.

The tenants have established a total monetary claim in the amount of \$1,300.00, less \$452.50 paid late by the landlords to the tenants. The tenants have been granted a monetary order pursuant to section 67 of the *Act* for the balance owing by the landlords to the tenants in the amount of \$847.50. This order must be served on the landlords and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 27, 2017

Residential Tenancy Branch