



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OLC, FF

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 the security deposit and pet damage deposit pursuant to section 38;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing which lasted approximately 10 minutes. Both tenants attended and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant, CK (the "tenant") primarily spoke on behalf of both tenants.

The tenant testified that the tenants' application for dispute resolution dated March 2, 2017 was personally served on the landlord on that date, together with the evidentiary materials. I find that the landlord was duly served with the tenants' application package in accordance with section 88 and 89 of the *Act* on March 3, 2017.

Issue(s) to be Decided

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

Should the landlord be ordered to comply with the *Act*, regulations or tenancy agreement?

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

Background and Evidence

The tenants provided undisputed testimony regarding the following facts. This month-to-month tenancy began in July, 2016 and ended on November 30, 2016. A security deposit of \$525.00

and pet damage deposit of \$250.00 were paid at the start of the tenancy and is still held by the landlord. No condition inspection report was prepared at the start or the end of the tenancy. The monthly rent at the end of the tenancy was \$1,050.00 payable on the first of the month.

The tenants moved out of the rental unit on November 30, 2016. The tenants provided the landlord with their forwarding address in writing on December 1, 2016. There was no condition inspection report prepared at the end of the tenancy. At no time did the tenants consent to have the landlord keep any of the security deposit and pet damage deposit.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit and pet damage deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit and pet damage deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit and pet damage deposit as per section 38(4)(a).

I accept the tenants' undisputed evidence that the tenants provided written notice of the forwarding address on December 1, 2016. I accept the undisputed evidence of the tenants that the landlord failed to return the full security deposit and pet damage deposit to the tenants within 15 days of December 1, 2016, the time frame granted under section 38 (1)(c) of the *Act* nor did the landlord make an application claiming against the security deposit and pet damage deposit during that period.

In addition, the tenant testified that no condition inspection report was prepared at the start of the tenancy. Section 24 of the *Act* outlines the consequences if reporting requirements are not met. The section reads in part:

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

...

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Accordingly, I also find that the landlord has extinguished any right to claim against the security deposit and pet damage deposit by failing to prepare a condition inspection report at the start of the tenancy.

Based on the undisputed evidence before me, I find that the landlord has failed to return the tenants' security deposit and pet damage deposit in full or file an application claiming against

the amount within the 15 days of December 1, 2016, provided under section 38(1)(c) of the *Act*. I accept the tenants' evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenants are entitled to a \$1,550.00 Monetary Order, double the value of the security deposit and pet damage deposit paid for this tenancy. No interest is payable over this period.

As the tenants were successful in their application they may also recover the \$100.00 filing fee.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$1,650.00 under the following terms, which allows the tenants to recover their security deposit, the pet damage deposit and the filing fee for their application:

Item	Amount
Double Security Deposit	\$1,050.00
Double Pet Damage Deposit	\$500.00
Filing Fees	\$100.00
Total Monetary Order	\$1,650.00

The landlord must be served with 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: May 10, 2017

Residential Tenancy Branch