



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AXIS ASSET MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, MNR, OLC, FF

Introduction

This hearing convened as a result of Tenants' Application for Dispute Resolution wherein the Tenants requested monetary compensation from the Landlord including return of double the security deposit, money owed, and to recover the filing fee.

The hearing was conducted by teleconference on March 8, 2018. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

1. Are the Tenants entitled to monetary compensation from the Landlord for return of double their security deposit, compensation for money owed and recovery of the filing fee?

Background and Evidence

The Tenant T.G. testified that the tenancy began July 2014. The Tenants paid a security deposit in the amount of \$612.50. She confirmed that they moved into the rental with another tenant, A.A., who had been residing in the rental unit prior to July 2014. She further stated that when A.A. moved out, they returned his share of the security deposit.

The tenancy ended on July 1, 2017. T.G. stated that they did the move out condition inspection on July 3, 2017 with Landlord's representatives, D.P., at which time the Tenants provided their forwarding address on the report. The Landlord failed to provide a copy of the move out condition inspection to the Tenants despite the Tenants' requests.

T.G. stated that despite their requests, they never received return of the security deposit. On August 2, 2017 the Tenants sent an email to the Landlord enquiring as to the status of the security deposit. A copy of this email was provided in evidence.

In response the Landlord sent an email to the Tenants as follows:

"Sorry we've been short people. The cheque has been sent out this week".

On August 14, 2017 the Tenants again followed up with the Landlord regarding the security deposit by email. In response the Landlord sent an email on August 16, 2017 indicating the cheque had been sent to their address on August 2, 2017.

T.G. also stated that approximately two months before the tenancy ended they replaced the showerhead in the amount of \$44.79 with tax. She further stated that D.P., the person with whom they dealt during the tenancy, told them he would reduce their next month's rent accordingly. T.G. stated that when they completed the move out inspection she provided the receipt to D.P. as the rent had not been reduced as promised. In evidence she provided evidence of the price of this shower head

In response to the Tenants' claims, R.W. confirmed that she had a copy of the move out condition inspection report in front of her and confirmed it was signed on July 3, 2017. R.W. stated that the property manager who did the move out inspection was "A.". She stated that she didn't know his last name. The report was not provided in evidence.

R.W. stated that the Tenants provided their forwarding address in writing on the report, although she claimed the address “was open for interpretation” as one of the numbers looked like a 6, not a 4.

R.W. further confirmed that they sent the security deposit to the Tenants at the address noted on the move out inspection on August 2, 2017.

R.W. further confirmed that on August 14, 2017 the Landlords received an email from the Tenants confirming their proper address.

R.W. stated that she didn’t know anything about the showerhead.

Analysis

After consideration of the evidence before me, the testimony of the parties and on a balance of probabilities I find that the Tenants are entitled to the amounts claimed on their Application for Dispute Resolution.

Section 38 of the *Residential Tenancy Act* provides as follows:

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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) [*tenant fails to participate in start of tenancy inspection*] or 36 (1) [*tenant fails to participate in end of tenancy inspection*].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) 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, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].

(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.

I accept the Tenants evidence that they did not agree to the Landlord retaining any portion of their security deposit. I find that the Landlord received the Tenants forwarding address in writing on July 3, 2017.

Based on the testimony of the parties and the email sent by the Landlord's representative, I find that the Landlord attempted to return the deposit on August 2, 2017. This was beyond the 15 days required by section 38(1) of the *Act*.

I also find the Landlord failed to provide the Tenants with a copy of the move out condition inspection report as required by section 18 of the *Residential Tenancy Regulation*. By failing to perform the outgoing condition inspection reports in accordance with the *Act* and the *Regulation* the Landlord also extinguished their right to claim against the security deposit for damages, pursuant to section 36(2) of the *Act*.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenants the sum of **\$1,225.00**, comprised of double the security deposit (2 x \$612.50).

I accept the Tenants' evidence that the Landlord's representative, D., agreed to reimburse them the cost of the showerhead which they purchased during the tenancy. I find they are therefore entitled to the **\$44.79** claimed.

As the Tenants have been substantially successful, they are also entitled to recovery of the \$100.00 fee for filing this Application.

Conclusion

The Tenants are granted compensation in the amount of **\$1,369.79** for the following:

2 x \$612.50 security deposit pursuant to section 38	\$1,225.00
Compensation for cost of showerhead	\$44.79
Filing fee	\$100.00
TOTAL AWARDED	\$1,369.79

The Tenants are given a formal Monetary Order in the amount of **\$1,369.79**. They must serve the Order on the Landlord as soon as possible. Should the Landlord fail to comply with this Order, the 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: March 8, 2018

Residential Tenancy Branch