



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT MNSD**

Introduction

This hearing dealt with an application by the tenants for a monetary order under the *Residential Tenancy Act* (the *Act*) for the following:

- A return of the security deposit under section 38; and
- Reimbursement of the filing fee under section 72.

Both tenants and both landlords attended. Both parties were given full opportunity to provide affirmed testimony, present evidence, cross examine the other party and make submissions.

The landlords acknowledged receipt of the Notice of Hearing and all evidentiary materials from the tenants. No issues of service were raised. I find the landlords were served pursuant to section 89 of the *Act*.

Issue(s) to be Decided

- Are the tenants entitled to a monetary award equivalent to double the value of the security deposit because of the landlords' failure to comply with the provisions of Section 38 of the *Act*?
- Are the tenants entitled to reimbursement of the filing fee under Section 72 of the *Act*?

Background and Evidence

The parties testified they entered into a residential tenancy agreement beginning December 15, 2016 and ending on March 31, 2018. Rent was \$1,100.00 a month payable on the first of the month.

A copy of the tenancy agreement was submitted as evidence.

The parties agreed that at the beginning of the tenancy, the tenants paid a security deposit to the landlords in the amount of \$550.00 which the landlords still hold. The tenants have not provided authorization to the landlords to retain the security deposit. The landlords acknowledged receipt of the tenants' forwarding address in a text received in April 2018.

The landlords testified they did not file an application for dispute resolution.

The landlords submitted substantial evidence about the damage they claimed the tenants did to the unit during the tenancy and the costs the landlords incurred to clean up and remove debris.

Analysis

I have reviewed all evidence and testimony before me and will refer only the relevant facts and issues meeting the requirements of the rules of procedure.

The *Act* contains comprehensive provisions regarding security and pet damage deposits.

As stated in section 38 of the *Act*, the landlord is required to either return the tenant's security 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 and receipt of the tenant's forwarding address in writing.

Section 38 states as follows:

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.

If that does not occur, the landlord must pay a monetary award equivalent to double the value of the security deposit under section 38.

Section 38(6) states as follows:

- (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*

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 pursuant to section 38(4)(a).

I find the landlords have not brought proceedings for compensation or an application for dispute resolution claiming against the security deposit for any outstanding rent or damage to the rental unit pursuant to section 38(1)(d) of the *Act*.

I find the tenants provided the tenants' forwarding address in writing pursuant to section 38(1)(b) and did not provide consent to the landlords to keep any portion of the security deposit pursuant to section 38(4)(a).

Based on the above, the testimony and evidence, and on a balance of probabilities, I find the landlords are in breach of the *Act* by failing to return the security deposit or applying for dispute resolution as required.

As the tenants are successful in this application, the tenants are entitled to reimbursement of the filing fee pursuant to section 72.

The award to the tenants is summarized as follows:

ITEM	AMOUNT
Security Deposit	\$550.00
Double the Security Deposit	\$550.00
Reimbursement of the filing fee	\$100.00
Monetary Award Tenant	\$1,200.00

The landlords submitted testimony about the condition of the rental unit needing cleaning and repair after the end of the tenancy.

The landlords are unable to make a monetary claim through the tenants' application pursuant to Rules of Procedures 2.1 which states as follows:

2.1 Starting an Application for Dispute Resolution

To make a claim, a person must complete and submit an Application for Dispute Resolution.

Therefore, the landlords must file the landlords' own application to keep the deposit within the 15 days of certain events, as explained above.

The landlords may still file an application for alleged damages.

However, the issue of the security deposit has now been conclusively dealt with in this hearing.

Conclusion

I order the landlords pay to the tenants the sum of **\$1,200.00** pursuant to sections 38 and 72 of the *Act*.

The landlords must be served with a copy of this order as soon as possible. Should the landlords 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: November 02, 2018

Residential Tenancy Branch