



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FFT

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 their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions. The landlords' agent, MS, did not call into the teleconference until the end of the hearing at approximately 1:37 p.m. MS stated that he had work, and could not call in until this time. I provided a summary of the proceedings to MS, and he was informed that the decision would be sent out to all parties in writing after the hearing.

The landlords confirmed receipt of the tenants' application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlords were duly served with the tenants' application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for the return of their security deposit pursuant to section 38 of the *Act*?

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

Background and Evidence

This tenancy began on May 1, 2016, with monthly rent set at \$1,200.00. The landlords had collected a security deposit in the amount of \$600.00, and continue to hold that deposit. The

tenants moved out on September 30, 2018, and provided a forwarding address on the same date to the landlords.

The landlords did not dispute the fact that they had kept the tenants' deposit, and provided documentary evidence to show why they had retained the deposit. The landlords provided photos as well as other documentary evidence to support that the tenants failed to return the home in clean and undamaged condition. The landlords confirmed in the hearing that the tenants did provide their forwarding address on September 3, 2018, but that they did not realize that they had to file an application seeking an Order to keep the money.

The landlords expressed concern that their evidence and claim were not being considered, and the landlords were informed that my decision will take consideration all the testimony and evidentiary materials submitted for the hearing. The landlords were informed that only the tenants' application was before me, and that any monetary compensation that they seek for losses associated with this tenancy has to be dealt with as a separate application as one was not filed and scheduled to be joined with the tenants'.

The tenants' testified that they have not received a return of any portion of the security deposit, and did not give written authorization to allow the landlords to retain any portion of the security deposit.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "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."

In this case, I find that the landlords had not returned the tenants' security deposit in full within 15 days of receipt of the tenant's forwarding address. There is no record that the landlords applied for dispute resolution to obtain authorization to retain any portion of the tenants' security deposit. The tenants gave sworn testimony that the landlords have not obtained their written authorization at the end of the tenancy to retain any portion of their security deposit.

In accordance with section 38 of the *Act*, I find that the tenants are therefore entitled to a monetary order amounting to double the original security deposit. As the tenants were

successful in their application, I find that the tenants are also entitled to recover the filing fee from the landlords.

Conclusion

I issue a Monetary Order in the tenants' favour under the following terms which allows the tenants to recover the security deposit retained by the landlords, plus a monetary award equivalent to the value of their security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*. The tenants are also entitled to recover the cost of the filing fee for this application.

Item	Amount
Return of Security Deposit	\$600.00
Monetary Award for Landlords' Failure to Comply with s. 38 of the <i>Act</i>	600.00
Recovery of Filing Fee	100.00
Total Monetary Order	\$1,300.00

The tenants are provided with this Order in the above terms and the landlords must be served with a copy of this Order as soon as possible. Should the landlords 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: February 14, 2019

Residential Tenancy Branch