



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MNSDS-DR

Introduction

This hearing dealt with the adjourned Direct Request Application filed by the Tenants under the *Residential Tenancy Act* (the “Act”). The Tenants applied for the return of their security deposit. The matter was set for a conference call.

Both the Tenants and the Agent for the Landlord (the “Landlord”) attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and the Tenants were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The Tenant testified that they had not received the Landlord documentary evidence that was submitted to this proceeding.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Has there been a breach of Section 38 of the *Act* by the Landlord?
- Are the Tenants entitled to the return of their security deposit?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The parties agreed that this tenancy began on October 1, 2015 and ended on October 30, 2020. The parties also agreed that the Tenants paid the Landlord a \$313.20 security deposit at the outset of this tenancy.

The Tenants testified that they attended the move-out inspection of the rental unit on October 30, 2021, and that they provided the Landlord with her forwarding address that same day by writing the address on the move-out inspection document. The Tenants also testified that they did not give permission to the Landlord to keep any part of their security deposit.

The Landlord testified that they had received the Tenants' forwarding address, that they had not returned the deposits to the Tenants, nor had they filed a claim against the deposit.

Analysis

Based on the testimony, the documentary evidence before me, and on a balance of probabilities, I find as follows:

Section 38(1) of the Act gives the landlord 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposits or repay the security deposit and pet damage deposit to the tenant.

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.

I accept the agreed-upon testimony of these parties and find that this tenancy ended on October 30, 2021, the date the Tenants moved out of the rental unit and that they provided their forward address to the Landlord that same day by writing it on the move-out inspection report. Accordingly, the Landlord had until November 14, 2020, to comply with section 38(1) of the Act by either repaying the deposit in full to the Tenants or submitting an Application for Dispute resolution to claim against the deposit. The Landlord, in this case, did neither.

I also accept the Tenants' testimony that they had not given the Landlord permission to retain any portion of their security deposit for this tenancy. At no time does a landlord have the right to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. If the landlord and the tenant are unable to agree, in writing, to the repayment of the security deposit or that deductions be made, the landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later. It is not enough that the landlord thinks they are entitled to keep even a small portion of the deposit based on unproven claims.

I find that the Landlord breached section 38 (1) of the Act by not returning the Tenants' deposit or filing a claim against the deposits within the statutory timeline.

Section 38 (6) of the Act goes on to state that if the landlord does not comply with the requirement to return or apply to retain the deposit within the 15 days, the landlord must pay the tenant double the security deposit.

Return of security deposit and pet damage deposit

38 (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.

Therefore, I find that pursuant to section 38(6) of the Act, the Tenants have successfully proven that they are entitled to the return of double their security deposit. I find for the Tenants, in the amount of \$626.40, granting a monetary order for the return of double the security deposit for this tenancy.

Conclusion

I find that the Landlord breached section 38 of the *Act* when they failed to repay or make a claim against the security deposit and pet damage deposit as required by the *Act*.

I find for the Tenants pursuant to sections 38 of the *Act*. I grant the Tenants a **Monetary Order** in the amount of **\$626.40**. The Tenants are provided with this Order in the above terms, and 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: November 4, 2021

Residential Tenancy Branch