



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an application by the tenants for return of double the security deposit and recovery of the filing fee.

Both parties participated in the conference call hearing.

Issue(s) to be Decided

Are the tenants entitled to any of the above under the Act.

Background and Evidence

This tenancy began May 1, 2007. The property was sold in June 2011 and a new tenancy agreement entered into with the current landlord. The new fixed term tenancy agreement was for a monthly rent of \$1100.00 including utilities and the tenants paid a \$550.00 security deposit.

The tenants stated that they were given notice by the landlord that the rental property was going to be demolished in February 2012 and after giving the landlord proper notice the tenants vacated the rental unit January 31, 2012. The tenants stated that the property has since been demolished and that they were not aware of the requirement of one month's rent compensation when served a 2 month notice for landlord's use of property.

The tenants stated that they had verbally requested the security deposit back from the landlord however to date the landlord has not returned the security deposit. The tenants stated that their forwarding address had never been provided to the landlord in writing.

The landlord testified that he had never received the tenants forwarding address in writing nor had the tenants ever called and told him what their new address was. The landlord also inquired as to how he could make a claim for damages against the tenants although the property was demolished; the landlord was advised that he was at liberty to file his own application through this office.

The tenants in this application requesting double the security deposit as provided in the Act.

Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenants have not met the burden of proving that they have grounds for entitlement to a monetary order for return of double the security deposit.

Section 38(1) of the *Residential Tenancy Act* provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy **and the date the landlord received the tenant's forwarding address in writing**. The tenants in this case however have not yet provided the landlord with their forwarding address in writing as required by the Act. Therefore the tenants application for return of double the security deposit is dismissed with leave to reapply.

The tenants understand that once the landlord has been provided with their forwarding address in writing, the landlord within 15 days, must either return the security deposit to the tenants or make a claim to keep all or part of the security deposit.

Residential Tenancy Act **Section 38 Return of security deposit and pet damage deposit** speaks to:

- (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.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [service of documents] or give the deposit personally to the tenant.

The tenant's application is dismissed with leave to reapply.

As the tenants have not been successful in their application the tenants are entitled to recovery of the \$50.00 filing fee.

Conclusion

The tenant's application is dismissed with leave to reapply.

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: June 21, 2012

Residential Tenancy Branch