



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the tenants' application to recover double the security deposit and to recover the filing fee from the landlords for the cost of this application.

One of the tenants and the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch however the landlord did not provide documentary evidence to the tenant in advance of this hearing. The landlord was permitted to provide additional evidence after the hearing had concluded.

Issue(s) to be Decided

Are the tenants entitled to a Monetary Order to recover double their security deposit?

Background and Evidence

The parties agree that this tenancy started on December 01, 2011. This was a fixed term tenancy which was due to expire on April 15, 2012. The tenant testifies that they moved from the rental unit on April 15, 2012. The landlord testifies that they moved from the rental unit on April 24, 2012. The parties agree that the landlord did not conduct a move in condition inspection or report at the start or end of the tenancy.

The tenant testifies that there were two couples renting this unit. Both couples had their own separate tenancy agreement. The tenant testifies she rented the unit with her boyfriend and their tenancy agreement states that their rent was \$1,000.00 per month due on the first day of each month. The tenants paid a security deposit of \$500.00 on November 28, 2012. The tenant testifies that she had applied to recover double the security deposit for both sets of tenants in her application.

The tenant testifies that she gave the landlord her forwarding address in writing on May 10, 2012. The tenant testifies that the landlord did not return the tenants security deposit within 15 days of receiving the tenants security deposit and the tenant therefore seeks to recover double their security deposit.

The tenant testifies that they contacted the landlord on April 24 to inform the landlord that they had moved from the rental unit on April 15, 2012.

The landlord testifies that she was not able to conduct a move in inspection of the property as the tenants called the landlord when they were moving in to say they were three hours away. The landlord testifies that as she lives six hours away she could not get to the unit to do the report and the tenants agreed this was fine.

The landlord testifies that the tenants were given a vacating sheet check list and were supposed to vacate on April 15, 2012. The landlord testifies the tenants overheld the unit until April 24, 2012 as this was the date the tenants contacted the landlord to inform the landlord they had moved out. The landlord agrees she received the tenants forwarding address on May 10, 2012. The landlord testifies that she sent the tenants the sum of \$125.00 on May 24, 2012 by e-mail transfer and documented all the reasons why the landlord had withheld the balance of the security deposit. The landlord testifies that the tenants did not accept this e-mail transfer and the money was returned to the landlords account.

Analysis

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing, whichever is the later date, to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that the landlord did receive the tenants forwarding address in writing on May 10, 2012. As a result, the landlord had until May 25, 2011 to return the tenants security deposit. I find the landlord did not return the security deposit and the landlord has extinguished their right to file a claim against the deposit as the landlord failed to complete either a move in or move out condition inspection of the property with the tenants in accordance with s. 24(2) and 36(2) of the *Act*. Therefore, I find that the tenants have established a claim for the return of double their security deposit to the sum of \$1,000.00 pursuant to section 38(6)(b) of the *Act*.

The tenants have applied for the sum of \$2,500.00. However the tenants living in the rental unit had two separate tenancy agreements with the landlord. Consequently these tenants are only entitled to recover the security deposit they paid in accordance with their tenancy agreement and not the other tenants' security deposit as that is covered under a separate tenancy agreement

I further find the tenants are entitled to recover the **\$50.00** filing fee from the landlords pursuant to section 72(1) of the *Act*.

Conclusion

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,050.00**. The order must be served on the respondent and is enforceable through the Provincial Court 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: July 31, 2012.

Residential Tenancy Branch