



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: MNR MNSD MNDC FF

For the tenants: MNSD FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The landlord applied for a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for authorization to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee.

The tenants applied for a monetary order for the return of all or part of their pet damage deposit or security deposit, and to recover the filing fee.

Tenant SV, and landlord agent TK, attended the hearing. The parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me.

The agent for the landlord confirmed that the landlord received the tenants’ evidence and that they had the opportunity to review the tenants’ evidence prior to the hearing. The landlord’s evidence was excluded from the hearing as it was submitted late and not in accordance with the rules of procedure. I find the landlord was served in accordance with the *Act*.

I have reviewed all oral and written evidence 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.

Preliminary and Procedural Matters

During the hearing, the landlord's agent requested to withdraw their application in full. As a result, I have not considered the landlord's application. The landlord is at liberty to re-apply, however, I note that withdrawing an application does not extend any timelines under the *Act*.

Issue to be Decided

- Are the tenants entitled to the return of their security deposit or pet damage deposit under the *Act*?

Background and Evidence

A copy of the tenancy agreement was not submitted in evidence. Although the parties agreed the tenancy began on August 1, 2013, the parties disputed the date the tenancy ended. The tenant stated that the tenants vacated and returned the rental unit keys to the landlord on August 13, 2013. The agent for the landlord (the "agent") stated that he did not receive the keys from the tenants until August 25, 2013.

During the hearing, the tenant testified that he has not provided their written forwarding address to the landlord requesting the return of their security deposit, other than submitting an application claiming the return of the security deposit.

Analysis

Based on the testimony and documentary evidence before me, and on the balance of probabilities, I find the following.

Section 38 of the *Act* states:

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.

[Emphasis added]

Based on the above, **I find** that the tenants' application for return of their security deposit is premature. The tenants did not provide their written forwarding address to the landlord. As a result, **I find** that the tenants have not complied with section 38 of the *Act*.

I ORDER the tenants to mail their written forwarding address to the landlord by registered mail. The registered mail will be deemed served five days later pursuant to section 90 of the *Act*. The landlord will have 15 days from the fifth day after the registered mail has been sent, which is the deemed service date, to either return the tenants' security deposit, and any other deposits collected by the landlord such as the "furniture deposit", or make an application claiming towards all the deposits held.

If the tenants do not receive their deposits from the landlord as described above, or the landlord does not file a claim to keep these deposits, the tenants are at liberty to reapply for their deposits after the 15th day from the deemed service date.

Conclusion

The landlord has withdrawn their application in full. As a result, the landlord is at liberty to reapply.

The tenants' application is premature. The tenants have been ordered to mail their written forwarding address to the landlord by registered mail and are at liberty to reapply for the return of their deposits should the landlord fail to comply with section 38 of the *Act*.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 5, 2013

Residential Tenancy Branch

