



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an application by the tenant for an order compelling the landlords to return their security deposit. The landlord did not participate in the conference call hearing. The tenant PE, who represented both tenants at the hearing, presented evidence that he served the landlords with the application for dispute resolution and notice of hearing via registered letter.

The landlords submitted evidence prior to the hearing which included a statement advising that the male landlord would not be able to attend the hearing as he was out of town that day.

Rule 6 of the Residential Tenancy Rules of Procedure permit a party to request an adjournment prior to the hearing and require the party to describe the circumstances which are beyond his control that will prevent him or her from attending the hearing. The statement did not explain why the co-respondent landlord could not attend the hearing nor did it explain why he could not phone into the hearing from another town. He stated that this was his “fly in” day to a remote community and it is possible that by this he meant that he was actually in flight at the time of the hearing, although his statement does not assert this.

The Rules of Procedure require me to consider the following criteria when determining whether it is appropriate to grant an adjournment:

6.4 Criteria for granting an adjournment

Without restricting the authority of the arbitrator to consider other factors, the arbitrator must apply the following criteria when considering a party’s request for an adjournment of the dispute resolution proceeding:

- a) the oral or written submissions of the parties;
- b) whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1 [objective];
- c) whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;
- d) the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
- e) the possible prejudice to each party

The tenant objected to the adjournment and stated that he did not understand why the landlord could not telephone from the remote area or why the co-respondent could not attend. I found that because the landlords submitted evidence and a statement of events, their position on the dispute was made clear. The landlords provided in the submitted evidence all of the information I required in order to make a decision. I determined that proceeding with the hearing would still be fair to the landlords as their documentary evidence was considered. Although I did not believe that the landlords intentionally acted in a way which necessitated an adjournment, I also noted that there was no reason given why an agent or the co-respondent could not have participated in the hearing. I determined that the prejudice to both parties was minimal in proceeding and I therefore denied the request for an adjournment and the hearing proceeded in the absence of the landlords.

Issue to be Decided

Are the tenants entitled to the return of their security deposit?

Background and Evidence

The facts are not in dispute. The tenancy began on July 15, 2011 at which time the tenants paid a \$412.50 security deposit. The tenancy ended on January 31, 2013. On February 5, 2013 the tenants provided to the landlords their forwarding address in writing to which they received the landlords' reply that they intended to keep most of the deposit. The tenants did not receive any part of the deposit back from the landlords.

Analysis

Section 38(1) of the Act provides that within 15 days of the later of the last day of the tenancy and the date the landlord receives the tenant's forwarding address in writing,

the landlord must either return the deposit in full to the tenant or file an application for dispute resolution to make a claim against the deposit.

Section 38(6) of the Act provides that where a landlord fails to comply with section 38(1), the landlord must pay to the tenant double the security deposit. I find that the landlords failed to comply with section 38(1) and are now liable to pay the tenants double the security deposit. I therefore award the tenants \$825.00. As the tenants have been successful in their claim, I find they should recover the \$50.00 filing fee paid to bring their application and I award them \$50.00 for a total entitlement of \$875.00. I grant them a monetary order under section 67 for that sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

I note that the landlords' evidence indicates that they believe they incurred costs as a result of the tenants' failure to adequately clean and repair the unit. The only effective defence against the tenants' claim would have been proof that the landlords returned the deposit in full within 15 days of the end of the tenancy, filed a claim against the deposit or had the tenants' written permission to retain the deposit. The landlords may not arbitrarily retain the deposit and then argue that they were entitled to do so as a result of the condition of the rental unit at the end of the tenancy. The landlords were required by law to either file a claim against the tenants or obtain their written consent to retain the deposit and in this case they failed to do so. Ordinarily the landlords would be free to file a claim against the tenants for damage or the cost of cleaning, but as the tenancy ended more than 2 years ago, section 60(1) of the Act prevents them from filing a claim.

Conclusion

The tenants are granted a monetary order for \$875.00.

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: March 10, 2015

Residential Tenancy Branch

