



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 the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of double the amount of their security deposit, pursuant to section 38; and
- authorization to recover their filing fee for this application from the landlord, pursuant to section 72.

The tenant DR ("tenant") and the landlord attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. The tenant confirmed that she had authority to speak on behalf of her husband, the other tenant CR named in this application, as an agent at his hearing.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package ("Application"), which the tenant confirmed was sent on October 11, 2014 by way of registered mail. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' Application.

The tenant confirmed receipt of the landlord's written evidence package. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were duly served with the landlord's written evidence package.

During the hearing, the tenant testified that she wished to withdraw the tenants' Application for a monetary order in the amount of \$2,175.00 for moving expenses. The tenant indicated that due to mice being present in the rental unit and the landlord's refusal to deal with the mice, the tenants were forced to move. The tenants provided notice to the landlord of this claim in the "details of the dispute" section of their Application. Accordingly, this portion of the tenants' Application is withdrawn.

Issues to be Decided

Are the tenants entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Are the tenants entitled to recover their filing fee for this Application from the landlord?

Background and Evidence

Both parties agreed that this month-to-month tenancy began on September 1, 2012 and ended on August 31, 2014. Monthly rent in the amount of \$725.00 was payable on the first day of each month. Both parties agreed that a security deposit of \$362.50 was paid by the tenants and the landlord continues to retain this deposit. The landlord confirmed that a written tenancy agreement governs this tenancy. The landlord testified that no move-in or move-out condition inspection reports were completed for this tenancy. The landlord stated that she did not have written permission from the tenants to retain any amount from their security deposit.

The tenant testified that the landlord was provided with the tenants' forwarding address in writing by way of a letter, dated September 19, 2014, which was sent by registered mail to the landlord. The landlord confirmed receipt sometime in October 2014, indicating that the tenants sent the mail to the wrong address.

The tenants seek the return of double the amount of their security deposit of \$362.50, totalling \$725.00. The tenant stated that pursuant to section 38 of the *Act*, the landlord did not return the security deposit in full or make an application within 15 days of the end of this tenancy and providing a forwarding address in writing.

The landlord indicated that she retained the tenants' entire security deposit for damage to the rental unit. The landlord stated that the damage totalled \$368.00 which included \$78.00 for a lock and key set and \$20.00 for time and travel to purchase this set, \$60.00 to clean the stove, \$60.00 to clean the kitchen floor, \$30.00 to move and dispose of items to recycling, \$60.00 to dispose of other articles and \$60.00 to wash the bathroom and kitchen walls. The landlord provided the tenants with a letter, dated October 1, 2014 and amended in April 2015, regarding the above damage and her intention not to return the tenants' security deposit. At the hearing, both parties agreed that the landlord was entitled to \$148.00 for damage from the tenants, including \$30.00 to remove articles, \$40.00 to clean the stove and \$78.00 to replace the lock and key set.

The landlord stated that she attempted to file an application for dispute resolution, dated April 20, 2015, with a monetary order worksheet, dated April 8, 2015, at the Residential Tenancy Branch ("RTB"). She indicated that the RTB office provided her with the same file number as the tenants' Application, but it was not joined together with this hearing as a cross-application. The landlord confirmed that her file was not scheduled for a separate hearing either. The landlord confirmed that the following settlement is a binding resolution to her application that she attempted to file at the RTB.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues with respect to this entire tenancy:

1. Both parties agreed that the landlord will retain \$148.00 from the tenants' security deposit;
2. Both parties agreed that the landlord will return the remainder of the tenants' security deposit in the amount of \$214.50 to the tenants by way of cheque to be sent out by registered mail by May 27, 2015;
3. Both parties agreed that this settlement agreement constitutes a final and binding resolution of the tenants' Application at this hearing and any issues arising out of this tenancy;
4. Both parties agreed that this settlement agreement constitutes a final and binding resolution of the landlord's potential claims against the tenants arising out of this tenancy;
5. Both parties agreed that they will not initiate any further claims or applications against each other at the Residential Tenancy Branch, with respect to any issues arising out of this tenancy.

These particulars comprise a full and final settlement of all aspects of this dispute and arising out of this tenancy. Both parties gave verbal sworn affirmation at the hearing that they understood and agreed to the above settlement terms as legal, final, binding and enforceable, settling all aspects of this dispute and arising out of this tenancy.

Conclusion

To give effect to the settlement reached between the parties, I order the landlord to retain \$148.00 from the tenants' security deposit and to return the remainder of the tenants' security deposit in the amount of \$214.50 to the tenants.

The tenants' Application for a monetary order in the amount of \$2,175.00 for moving expenses is withdrawn.

The tenant testified that this agreement settled the tenants' Application for recovery of the \$50.00 filing fee from the landlord.

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: May 25, 2015

Residential Tenancy Branch

