



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MARINE VIEW MANOR
and [tenant name suppressed to protect privacy]

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 their security and pet damage deposits, pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord's two agents, landlord DW ("landlord") and "landlord JA," and the tenant SH ("tenant") attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. Both the landlord and landlord JA confirmed that they had authority to represent the landlord company named in this application, as agents at this hearing.

The tenant testified that she served the landlord with the tenants' application for dispute resolution hearing package on November 5, 2014, by way of registered mail. Both the landlord and landlord JA confirmed receipt of the hearing notice only, not the written evidence package, which the tenant said was sent in the same mail package as noted above. The tenant provided a Canada Post tracking number verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' hearing notice. I advised both parties that I do not find the tenants' written evidence, composed mainly of emails regarding attempts to re-rent the rental unit, to be relevant to my decision. Therefore, I do not make a finding with respect to service of the tenants' written evidence package.

Issues to be Decided

Are the tenants entitled to a monetary award for the return of their security and pet damage deposits?

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

Background and Evidence

The landlord testified that this tenancy began on July 1, 2014 and was for a fixed term of one year, but the tenant vacated the rental unit on July 31, 2014. The landlord stated that the keys to the rental unit were found on the kitchen counter on August 2, 2014. The tenant stated that she vacated the rental unit on July 30, 2014 and completed a move-out condition inspection and report with landlord JA on this date. The landlord confirmed that only a move-in condition inspection was performed at the beginning of this tenancy. The landlord did not provide a copy of this report for this hearing. Both the landlord and landlord JA confirmed that no move-out condition inspection or report was completed because the tenant was not present, as she had already left the rental unit.

Monthly rent in the amount of \$950.00 was payable on the first day of each month. The landlord testified that a security deposit of \$475.00 and a pet damage deposit of \$475.00 (collectively “deposits”) were paid by the tenant and the landlord continues to retain both deposits. The tenant provided a copy of the receipts received from the landlord for payment of both deposits.

The landlord confirmed that the tenants did not provide written permission to the landlord to retain any amount from their deposits. The tenant testified that she provided the landlord with the tenants’ written forwarding address on the move-out condition inspection report. The tenant indicated that she was unable to provide a copy of this report for this hearing because the landlord did not provide her with a copy when she requested it. The tenant stated that the tenants did not provide a written forwarding address in any other way to the landlord aside from the move-out condition inspection report. The landlord testified that the landlord did not receive a written forwarding address from the tenants until the tenants’ application for this hearing was received.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced

here. The principal aspects of the tenants' claims and my findings around each are set out below.

Section 38 of the *Act* requires the landlord to either return all of the tenants' security and pet damage deposits or file for dispute resolution for authorization to retain these deposits, within 15 days of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of both deposits. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of both deposits to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

The tenants seek the return of their deposits from the landlord, totalling \$950.00. The tenancy ended sometime between July 30 and August 2, 2014. The tenants did not give the landlord written permission to retain any amount from their deposits. The landlord did not return the full deposits to the tenants or make an application for dispute resolution to claim against these deposits, within 15 days of the end of this tenancy.

The tenant indicated that she provided a written forwarding address on the move-out condition inspection report. The tenant did not provide a copy of this report for this hearing. Both the landlord and landlord JA deny that a move-out condition inspection or report was completed. Accordingly, I find that the tenants did not meet their burden of proof to show, on a balance of probabilities, that they provided the landlord with a forwarding address in writing, in accordance with the *Act*.

The landlord has now been notified of the tenants' forwarding address by way of the tenants' application for this hearing. The landlord acknowledged this fact in his testimony during the hearing. Accordingly, the tenants' application for the return of their security and pet damage deposits is dismissed with leave to reapply. The landlord is put on notice that it is deemed to have received the tenants' written forwarding address on June 23, 2015, the day of this hearing.

Section 38(1) establishes that the landlord has 15 days after the later of the end of the tenancy and receipt of the tenants' forwarding address to return the tenants' deposits in full or to file an application for dispute resolution. If the landlord does not complete the above actions **by July 8, 2015**, the tenants may apply for the return of double the amount of their deposits, in accordance with section 38(6) of the *Act*.

As the tenants were unsuccessful in their application, they are not entitled to recover the \$50.00 filing fee from the landlord. The tenants must bear the cost of this filing fee.

Conclusion

The tenants' application for the return of their security and pet damage deposits is dismissed with leave to reapply. The landlord has until **July 8, 2015** to either return the tenants' deposits in full, or to file an application to retain any portion of the deposits. The landlord's ability to file an application to retain any portion of the deposits is only in the event that the landlord's right to claim against the deposits has not been extinguished. If either of the above actions does not occur, the tenants have leave to reapply for a monetary award of double their deposits.

The tenants' application to recover the \$50.00 filing fee from the landlord is dismissed without 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 26, 2015

Residential Tenancy Branch

