



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing was convened by way of conference call in response to the tenants' application for a Monetary Order to recover the security and pet deposit and a Monetary Order for money owed or compensation for damage or loss under the Residential Tenancy Act (Act), regulations or tenancy agreement.

Service of the hearing documents, by the tenants to the landlords, was done in accordance with section 89 of the *Act*; served by registered mail on September 08, 2015. Canada Post tracking numbers were provided by the tenants in evidence. The landlords were deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant (KC) appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlords, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order to recover the security and pet deposit?
- Are the tenants entitled to a Monetary Order for money owed or compensation under the Act, regulations or tenancy agreement?

Background and Evidence

The tenant testified that this tenancy started on July 01, 2014 for a fixed term period ending on July 31, 2015. The tenancy ended on that date although the tenants vacated the unit on June 20, 2015. Rent for this unit was \$1,745.00 per month due on the first day of each month in advance. The tenants paid a security deposit of \$872.50 and a pet deposit of \$872.50 on August 12, 2014.

The tenant testified that the landlords failed to return the security and pet deposit within 15 days of receiving the tenant's forwarding address in writing. The tenant testified that the forwarding address was provided to the landlords on July 04, 2015 after a walkthrough of the unit was conducted and the landlords asked the tenants to write their forwarding address down on a yellow pad. The tenant testified that the landlords were not given written permission to keep all or part of the security or pet deposit. The tenant testified that they do not waive their right to have the security and pet deposit doubled.

The tenant testified that the landlords did conduct a move in and a move out inspection of the unit at the start and end of the tenancy but failed to complete a move in and a move out condition inspection report. Therefore, there is no record of the condition of the unit at the start of the tenancy.

The tenant testified that the tenants gave the landlord permission to re-rent the unit throughout July, 2015 as they had vacated in June, 2015. The landlord had said he had re-rented the unit for August 01, 2015 but asked if the new tenants could move in in July and he would refund part of the July rent paid to the tenants. The tenant testified that they believe the new tenants did move into the unit in July but have no way to confirm when. The landlord has not returned any of July's rent and the tenants seek to recover \$1,047.00 of July's rent.

Analysis

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

Sections 23(4) and 35(3) of the *Act* require a landlord to complete a condition inspection report at the beginning and end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign the condition inspection report. In failing to complete the condition inspection reports when the tenants moved in and out, I find the landlords contravened s. 23(4) and 35(3) of the *Act*. Consequently, s. 24(2)(c) and s. 36(2)(c) of the *Act* says that the landlords' right to claim against the security or pet deposit for damages is extinguished.

When the landlords' right to claim against the security and pet deposit has been extinguished the landlords must return the security and pet deposit to the tenants within 15 days of either the end of the tenancy or the date the tenants give the landlords their forwarding address in writing.

Therefore, based on the above and the evidence presented I find that the landlords did receive the tenants' forwarding address in writing on July 04, 2015. As a result, the landlords had until July 19, 2015 to return all of the tenants' security and pet deposit. As the landlords failed to do so, the tenants have established a claim to have the security and pet deposit doubled to an amount of **\$3,490.00**, pursuant to section 38(6)(b) of the *Act*. There has been no accrued interest on the security deposit for the term of the tenancy.

With regard to the tenants' claim to recover a portion of rent from the landlord for July, 2015 because he re-rented the unit to new tenants; there is insufficient evidence to show when the new tenants moved into the rental unit. Consequently as this was a fixed term tenancy then the tenants are required to pay rent for July which is the last month of their fixed term. This section of the tenants claim is therefore dismissed.

Conclusion

I HEREBY FIND in favor of the tenants' amended monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$3,490.00**. The Order must be served on the Respondents. If the Respondents fail to comply with the Order, the Order 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: March 11, 2016

Residential Tenancy Branch

