



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, received at the Residential Tenancy Branch on July 21, 2016 and updated on July 22, 2016 (the "Application"). The Tenants applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order compelling the Landlords to return all or part of the security deposit or pet damage deposit; and
- an order granting recovery of the filing fee.

All parties attended the hearing and provided affirmed testimony.

The Tenants testified they served the initial Application package, including the Notice of a Dispute Resolution Hearing and documentary evidence, on the Landlords by registered mail on July 20, 2016. The Landlords confirmed receipt. In addition, the Tenants testified that a subsequent evidence package was served on the Landlord by registered mail in late December 2016. Although the Tenants were unable to refer to a specific date, the Landlords confirmed receipt.

The Landlords testified they served a documentary evidence package on the Tenants by registered mail. This package was received at the Residential Tenancy Branch on November 1, 2016. The Tenants confirmed receipt of the Landlords' documentary evidence.

All parties were in attendance at the hearing and were prepared to proceed. No issues were raised with respect to service or receipt of the above documents. The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

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.

Issue to be Decided

1. Are the Tenants entitled to an order compelling the Landlords to return all or part of the security deposit or pet damage deposit?
2. Are the Tenants entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties submitted a copy of the tenancy agreement between them. The agreement confirms the parties entered into a fixed-term tenancy agreement for the period from July 1, 2015 to July 1, 2016. Rent in the amount of \$3,000.00 per month was due on the first day of each month. The Tenants paid a security deposit of \$1,500.00 and a pet damage deposit of \$1,500.00.

The Tenants testified they provided the Landlords with their forwarding address in a text message on June 1, 2016. Although a partial address only, the Tenants submitted that the Landlords should have been aware of the Tenants' full mailing address based on an earlier text, in which M.M. congratulated the Tenants on their move. The Tenants' documentary evidence also included an excerpt from a text message, dated July 18, 2016, in which the Tenants state, in part:

Do you require us to provide you with our new address in writing on paper?

[Reproduced as written.]

During the hearing, the Tenants acknowledged receipt of two cheques, both dated July 15, 2016, returning the security and pet damage deposits in full. Copies of the cheques were provided with the Tenants' documentary evidence. However, the Tenants submit they are entitled to double the security deposit because the Landlords' cheques were not received until July 27, 2016. The Tenants testified to their belief the Landlords did not intend to return the security and pet damage deposits, but only did so when they were served with the Tenants' Application package.

In reply, the Landlords confirmed the tenancy ended on July 1, 2016. D.M. testified to his understanding that the Landlords had 15 days to return the security and pet damage deposits, which they did by regular mail on July 15, 2016.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after the latter of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, the Tenants submitted they provided the Landlords with their forwarding address by text on June 1, 2016. However, I am not satisfied the Tenants provided the Landlords with their forwarding address in writing in accordance with the *Act*. First, the address provided in the text message of June 1, 2016, was only a partial address. Second, the address was sent via text and was not in writing. Third, the Tenants followed up with a text message to the Landlords on July 18, 2016, asking if the Landlords required the Tenants to provide a forwarding address in writing on paper.

With respect to the Tenants' submission that the Landlords should have known where the Tenants were moving, I note the obligation was on the Tenants to provide a forwarding address in writing, not on the Landlord to piece the forwarding address together from various pieces of correspondence and conversations.

Even if I am wrong in concluding the Tenants did not provide a forwarding address in writing in accordance with the *Act*, the tenancy agreement confirmed the tenancy ended on July 1, 2016. Accordingly, the Landlord had 15 days – until July 16, 2016 – to repay the security and pet damage deposits to the Tenants. The Landlords testified, and I find, that cheques were sent to the Tenants' address on July 15, 2016. This finding is supported by the date appearing on the cheques. However, the Tenants submitted that the cheques must have been sent late because the cheques were not received by them until July 27, 2016.

Section 38 of the *Act* requires that a landlord repay the security and pet damage deposits within 15 days after the date the landlord receives the tenant's forwarding address in writing or after the end of the tenancy, whichever is later. The *Act* does not

require that the return of the security or pet damage deposit be received within that timeframe. Indeed, once the Landlords posted the cheques, receipt by the Tenants was beyond the Landlords' control. I find that the Landlords repaid the Tenants on July 15, 2016, which was within the timeframe permitted under section 38(1) of the *Act*.

To summarize, the Tenants are not entitled to the return of double the security and pet damage deposits as I have found they did not provide a forwarding address in writing in accordance with the *Act*. However, the Landlords did repay the security and pet damage deposits within 15 days after the end of the tenancy. The Tenants' Application is dismissed, without leave to reapply.

Conclusion

The Tenants' Application 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: January 25, 2017

Residential Tenancy Branch