



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 an application by the tenants for return the security damage deposit paid to the landlords and for the return of the application filing fee.

Both parties appeared at the hearing. Service of the tenants' application, notice of hearing, and evidence was not at issue and the landlords had each received their own set of materials. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue(s) to be Decided

Has there been a breach of s. 38 of the Act by the landlords?

Are the tenants entitled to return of the application filing fee?

Background and Evidence

A copy of the tenancy agreement was in evidence. It is signed by both landlords and both tenants. This tenancy began in May of 2013 and ended on or about December 3, 2016, when the tenants vacated the rental unit. The tenants paid the landlord a security deposit of \$1,050.00 at the beginning of the tenancy.

It was agreed that the tenants provided the landlord with their forwarding address by email in early December, 2016 and by regular mail in mid-January, 2017. Both the tenants' email and a photo of the envelope mailed to the landlords were in evidence.

A move-in condition inspection report was also in evidence. The landlords stated that there was no move-out condition inspection report completed.

It was also agreed that the tenants did not sign over a portion of the security deposit and that no move-out condition inspection report was completed.

The landlords claim the tenants had left the rental unit unclean and submitted a package of photographs in support. The landlords also submitted an itemized claim for costs associated with cleaning the rental unit and various other materials that were not relevant to the application before me.

Analysis

The Act contains comprehensive provisions dealing with security and pet damage deposits. Section 38 requires that the landlord handle these deposits as follows:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

...

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(Emphasis added)

Based on the agreed upon facts, I find that the landlords have breached the Act. The landlords had no agreement with the tenants that they could retain any portion of the security deposit. The landlords did not apply within 15 days of the end of the tenancy or receipt of the tenants' forwarding address to retain a portion of the security deposit.

By failing to perform an outgoing condition inspection report in accordance with the Act, the landlords also extinguished their right to claim against the security deposit for damages under 36(2) of the Act.

The landlords are in the business of renting and must therefore abide by the laws pertaining to residential tenancies. The security deposit is held in trust for the tenants by the landlords, who may not simply keep it without establishing their right to do so or obtaining the tenants' agreement. If the landlords and the tenants are unable to agree to the repayment of the security deposit or to deductions to be made to it, the landlords must file an application within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later.

The landlords may still file an application for cleaning costs and/or damages. However, the issue of the security deposit has been conclusively dealt with in this hearing.

Having made the above findings, I must order, pursuant to sections 38 and 67 of the Act, that the landlord pay the tenants the total sum of **\$2,200.00**, comprised of double the security deposit (2 x \$1,050.00) and the \$100.00 fee for filing this application.

Conclusion

The tenants are given a formal order in the above terms and the landlords must be served with a copy of this order as soon as possible. Should the landlords fail to comply with it, it may be filed in the Small Claims division of the Provincial Court and enforced as an order of that Court.

This decision is final and binding on the parties, except as otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Residential Tenancy Act*.

Dated: March 08, 2017

Residential Tenancy Branch