



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing convened as a result of the Tenants' Application for Dispute Resolution wherein the Tenants requested monetary compensation pursuant to section 51(2) of the *Residential Tenancy Act*, return of double the security deposit paid pursuant to section 38(6) of the *Act* and to recover the filing fee.

The hearing was conducted by teleconference on March 22, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

At the outset of the hearing the Tenants' Advocate confirmed that the Tenants did not receive a 2 Month Notice to End Tenancy for Landlord's Use pursuant to section 49 of the *Residential Tenancy Act*. As the Tenants did not receive such a Notice, they are not entitled to compensation pursuant to section 51 which reads as follows:

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

Issues to be Decided

1. Should the Tenants recover double their security deposit paid?
2. Are the Tenants entitled to recover the filing fee?

Background and Evidence

This tenancy began February 1, 2014. The Tenants paid a security deposit in the amount of \$800.00. The tenancy ended on September 1, 2016.

E.R. testified on behalf of the Tenants. She testified that on September 2, 2016 she delivered her forwarding address in writing to the Landlords. E.R. stated that she tucked the envelope between the door and the trim. She stated that she did not retain a copy of this letter and confirmed that it was written out by hand and that in the letter she requested return of the security deposit.

The Tenants provided a signed letter from E.R.'s mother, Y.R. wherein Y.R. confirms that she accompanied E.R. when the letter was dropped off at the Landlords. Y.R. also confirms that the letter included the Tenants' forwarding address and the request for return of the security deposit.

E.R. stated that she did not have any further communication with the Landlords.

E.R. further stated that she then filed for dispute resolution on September 21, 2016.

E.R. stated that the forwarding address she provided to the Landlords is the same address as that which was noted on her application for dispute resolution as well as is her current address.

P.E. testified on behalf of the Landlords.

P.E. confirmed that the tenancy ended on September 1, 2016.

When I asked the Landlord if he received the Tenants envelope from September 2, 2016 he stated that he had not seen it, although it was possible his wife had. He confirmed that his wife was not at the hearing as she was recovering from surgery.

P.E. stated that he received a post-marked envelope from September 24, 2016. He was not able to testify as to whether that included the Tenants' forwarding address, or the Tenants' application materials.

P.E. stated that the Landlords have made an application for Dispute Resolution to retain the Tenants' security deposit which is to be held July 31, 2017. The Branch records indicate this application was received February 28, 2017.

Analysis

The Tenants apply for return of double their security deposit pursuant to section 38 of the *Residential Tenancy Act* which provides as follows:

Return of security deposit and pet damage deposit

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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(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.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

There was no evidence to show that the Tenants had agreed, in writing, that the Landlord could retain any portion of the security deposit.

I accept the Tenants evidence that they provided the Landlords with their forwarding address on September 2, 2016. The Tenant, E.R., testified that she wrote the letter by hand and specifically asked for return of the deposit paid. She stated that she attended with her mother on that day. A signed letter from her mother confirms this.

P.E. testified that he did not see the September 2, 2016 letter, although conceded his wife "might have". He also stated he received communication from the Tenants later in September, yet wasn't able to confirm what was in the envelope.

In all the circumstances, I prefer the evidence of the Tenants and find it more likely that the Landlords received the Tenants' forwarding address September 2, 2016.

There was also no evidence to show that the Landlord had applied for arbitration, within 15 days of receipt of the forwarding address as required under section 38.

The security deposit is held in trust for the Tenants by the Landlords. The Landlords may only keep all or a portion of the security deposit through the authority of the *Act*, such as the written agreement of the Tenants an Order from an Arbitrator. If the Landlords believe they are entitled

to monetary compensation from the Tenants, they must either obtain the Tenants' consent to such deductions, or obtain an Order from an Arbitrator authorizing them to retain a portion of the Tenants' security deposit. Here the Landlords did not have any authority under the *Act* to keep any portion of the security deposit.

I note that the Landlord testified that the issue was the condition of the rental unit after the Tenants left; however, the Landlords are unable to make a monetary claim through the Tenants' Application. The Landlords' application for alleged damages will be heard in July of 2017; however, the issue of the security deposit has now been conclusively dealt with in this hearing.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlords pay the Tenants the sum of **\$1,700.00**, comprised of double the security deposit (2 x \$800.00) and the \$100.00 fee for filing this Application.

Conclusion

The Tenants are given a formal Monetary Order in the amount of **\$1,600.00** and the Landlords must be served with a copy of this Order as soon as possible. Should the Landlords fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced 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 22, 2017

Residential Tenancy Branch