



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Tenant LJ (the "tenant") and landlord JM (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Tenant GJ and landlord SM did not attend the conference call hearing. Tenant LJ confirmed she had authority to speak on behalf of tenant GJ and landlord JM confirmed he had authority to speak on behalf of landlord SM.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants authorized to obtain a return of all or a portion of the security deposit?

Are the tenants authorized to recover the filing fee for this application from the landlords?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on July 1, 2015 on a fixed term until June 30, 2016 at which time the tenants were to vacate unless the parties mutually agreed to continue the tenancy with a new lease. Rent in the amount of \$1,383.62 was payable on the first of each month. The tenants remitted a pet and security deposit totalling \$1,350.00 at the start of the tenancy.

On June 30, 2016 the parties signed the following;

"it is understood that per the July 1, 2015 – June 30, 2016 Residential Tenancy Agreement (dated June 11, 2015), the tenants of the above notes suite agreed to move out of the suite at the end of the fixed term tenancy unless mutually agreed with the landlord that tenancy may continue beyond June 30, 2016.

The landlord has advised the tenants that he is attempting to sell the suite and therefore not able to offer another fixed term or month-to-month tenancy.

The landlord is willing to continue the tenants' occupancy with NO fixed term or month-to-month tenancy agreement in place at the current monthly rental rate (\$1383.) and, commits to provide tenants with a minimum 30 day notice to move out of the suite upon the landlord entering into a firm offer of purchase and sale with a purchaser of the suite."

[Reproduced as written]

On July 26, 2016 the landlord gave the tenants notice by way of email, to vacate the unit no later than September 9, 2016. The parties signed an agreement on August 14, 2016 in which the tenants agreed to vacate the unit no later than September 3, 2016. The tenants vacated the unit on September 2, 2016.

September 10, 2016 the landlord and tenants conducted a move-out inspection report of the unit. The tenants provided the keys to the landlord and the landlord returned the security deposit, plus interest less three days rent for September 1, 2 and 3, 2016 in the total amount of \$1,240.00 (\$1,350.00 + \$28.00 - \$138.00). The tenants explained to the landlord that they had vacated on September 2, 2016 and requested the return of the deducted rent for September 3, 2016. At this time the tenants provided their forwarding address in writing to the landlord to provide him with the opportunity to return the

September 3, 2016 deducted rent. The landlord confirmed receipt of the tenants forwarding address on this date.

Tenants Claim

The tenant applied for a monetary order in the amount of \$1,506.10 for the following;

Item	Amount
Withheld from security deposit	\$110.00
Penalty for security deposit	\$675.00
Penalty for pet deposit	\$675.00
1 day pro-rated amount	\$46.10
Total Monetary Claim	\$1,506.10

It is the tenants position that the landlords were not obligated to pay interest in the amount of \$28.00, and the landlords did not have written permission to retain \$138.00 for three days rent. Therefore the tenants claim they are owed \$110.00 (\$138.00 - \$28.00 interest) plus \$46.10 in return for the retention of three days rent.

The tenant explained that she understood she was entitled to double the security and pet deposit due to the landlords' failure to abide by their June 30, 2016 agreement in which the landlord commits to providing 30 days' notice upon final offer of purchase or sale of the unit.

In reply, the landlord testified that while the tenants are correct in that he did not receive a final offer of purchase or sale of the unit he did provide more than 30 days' notice. The landlord testified that he deducted three days rent from the security deposit based on the tenants' written request to stay until such time. In an effort to satisfy the tenants claim, the landlords sent an e-transfer on November 9, 2016 in the amount of \$46.10 to the tenants. The tenants refused to accept this payment

Analysis

Section 38 of the *Act* establishes that a landlord has fifteen days from the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an arbitration application claiming against the deposit, or return the deposit. A tenant may waive their right to the return of the security deposit through written authorization to the landlord. In the absence of written authorization from the tenant, the landlord must return the security deposit or file an application within fifteen

days. Should the landlord fail to do this, the landlord must pay the tenant double the amount of the security deposit.

Based on the parties' testimony, the landlords received the forwarding address on September 10, 2016. The landlords did not file an arbitration application to retain the deposit, the landlords did not return the full deposit and the landlords did not receive written authorization to retain any portion of it.

While I do not find the tenants are entitled to double the value of their security deposit on the basis of the landlords' breach of their signed June 30, 2016 agreement I do find based on the above that the tenants are entitled to double the value of their security deposit in the amount of \$2,700.00 less the \$1,240.00 already paid for a total of \$1,460.00.

Based on the above calculation the tenants have been compensated for any unauthorized deductions. Consequently, I dismiss the remainder of the tenants' monetary claim without leave to reapply.

As the tenants were successful in this application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$1,560.00.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$1,560.00 against the landlords.

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: April 24, 2017

Residential Tenancy Branch

DECISION AMENDED PURSUANT TO SECTION 78(1)(A) OF THE <u>RESIDENTIAL TENANCY ACT</u> ON MAY 16, 2017 AT THE PLACES INDICATED.
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