



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

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

- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38.

The tenants did not participate in the conference call hearing, which lasted approximately 15 minutes. The landlords' agent (the "landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed he was an agent of the landlords named in this application, and had authority to speak on their behalf.

The landlord testified that on October 14, 2016 he forwarded the landlords' application for dispute resolution hearing package via registered mail to each tenant. The landlord provided a Canada Post receipt and tracking numbers as proof of service. Based on the testimony of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenants have been deemed served with the application on October 19, 2016, the fifth day after its registered mailing.

Issue(s) to be Decided

Are the landlords authorized to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order?

Background and Evidence

As per the submitted tenancy agreement and testimony of the landlord, the tenancy began on November 2, 2015 on a fixed term until November 2, 2016. Rent in the amount of \$2,100.00 was payable on the first of each month. The tenants remitted a security deposit in the amount of \$1,000.00 at the start of the tenancy. By way of mutual agreement, the tenants vacated the rental unit on August 31, 2016.

The landlord testified that written condition inspection reports were conducted at move-in and move-out and that the tenants provided their forwarding address on August 31, 2016. The landlord testified that since filing the application the tenants' have agreed to allow the landlord to retain \$430.00 of their security deposit to offset the costs the landlord has incurred in repairing the rental unit. The landlord testified that the remaining \$560.00 security deposit was returned to the tenant in October of 2016. In an effort to support their claim, the landlords have submitted an invoice totalling \$430.00, the tenancy agreement, the signed move-in condition inspection report, the signed move-out condition inspection report, an email from the tenant confirming receipt of the \$570.00 and photographs.

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 tenants forwarding address in writing to file an arbitration application claiming against the deposit, or return the deposit. The tenant may waive their right to the return of the security deposit through written authorization to the landlord.

The landlords received the forwarding address on August 31, 2016 and filed their application within fifteen days, on October 6, 2016. Based on the landlord's testimony and documentary evidence before me, I find the tenants waived their right to the return of \$430.00 of the \$1,000.00 security deposit through written authorization pursuant to section 38 of the *Act* and are in receipt of the remaining \$570.00 security balance deposit.

Conclusion

The landlords are entitled to \$430.00. I order the landlords to retain \$430.00 from the security deposit in full compensation of this amount. The tenants are entitled to the balance of the security deposit in the amount of \$570.00. Because the landlords have proven the tenants have already received this amount, I do not grant the tenants a monetary order.

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 07, 2017

Residential Tenancy Branch