



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 the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- 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 landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant AB, (the "tenant") primarily spoke for both co-tenants. The landlord EP (the "landlord") represented both co-landlords.

As both parties were in attendance I attempted to confirm service. The landlord confirmed receipt of the tenants' application for dispute resolution package and I find that the landlord was duly served in accordance with sections 88 and 89 of the Act.

While the landlord testified that they served their evidence package by registered mail the tenant said they had not received it. The landlord was unable to provide a Canada Post tracking number as evidence in support of service at the hearing. As the tenant testified that they had not received the landlord's evidence, I advised the parties that I would only consider those pieces of evidence included in the landlord's materials which the tenant confirmed having received on prior occasions. I have taken this approach after considering the guidance provided by Rule 3.17 of the Rules of Procedure.

Issue(s) to be Decided

Are the tenants entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*?

Are the tenants entitled to recover the filing fee of this application from the landlords?

Background and Evidence

The parties agreed on the following facts. This tenancy started in November, 2016 and ended on March 31, 2017. The monthly rent was \$950.00. The tenants provided a security deposit of \$475.00 at the start of the tenancy which is still held by the landlords.

The parties confirmed that no condition inspection report was prepared at either the start or end of the tenancy. Both parties submitted into written evidence a copy of the written tenancy agreement which provides that this is a fixed length tenancy of 3 months ending on February 1, 2016 with a handwritten note saying "3+3 + monthly after". The landlord testified that this notation means that the party agreed to a fixed term tenancy of 6 months scheduled to end on April 30, 2017.

The parties agreed that the tenant gave the landlord their notice on February 28, 2017, to end the tenancy on March 31, 2017. The parties confirmed that the tenants provided the landlord with a forwarding address in writing on April 6, 2017. The parties testified that the tenants have not provided written authorization that the landlord may retain any portion of the \$475.00 security deposit.

The landlord testified that because the tenants left before the end of the fixed term lease they were unable to find a new occupant for the rental unit until June, 2017 and suffered rental income losses. In addition the landlord testified that the rental unit was left in a state of disrepair which required cleaning and maintenance. The landlord said that because the tenants ended the fixed term lease early they should be allowed to retain the security deposit.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit.

However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

I accept the undisputed evidence of the parties that the tenants provided written notice of the forwarding address on April 6, 2017. I accept the undisputed evidence of the parties that the landlords did not return the security deposit, did not make an application for authorization to retain the security deposit nor did they have written authorization from the tenants that they may retain any portion of the security deposit.

The landlords claim that the tenants' early end of a fixed term tenancy entitles them to retain the security deposit as compensation for their loss. Even if there was a breach of a fixed term tenancy, a proposition that I make no determination on, the landlord must make an application pursuant to the *Act* or receive written authorization from the tenant to retain the security deposit. The landlords' claim of loss, damages to the rental unit and their inconvenience is of no matter unless the landlord makes an application in accordance with the *Act*. Even if there was a legitimate complaint the landlord must receive written authorization from the tenant pursuant to the *Act* to retain the security deposit. The landlord cannot decide to simply keep the damage deposit as recourse for their loss without following the legislative steps. Landlords are in the business of providing rental housing for profit. It is their duty to educate themselves on the provisions of the *Act* and conduct themselves accordingly.

In addition, the parties have testified that no condition inspection report was prepared at the start of the tenancy. Section 24 of the *Act* outlines the consequences if reporting requirements are not met. The section reads in part:

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

...

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Accordingly, I also find that the landlord has extinguished any right to claim against the security deposit by failing to prepare a condition inspection report at the start of the tenancy.

Based on the undisputed evidence before me, I find that the landlords have not filed an application to retain the security deposit within the 15 day time limit and have failed to return the tenants' security deposit in full. I accept the tenants' evidence that they have

not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlords' failure to abide by the provisions of that section of the *Act*. Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenants are entitled to a \$950.00 Monetary Order, double the value of the security deposit paid for this tenancy. No interest is payable over this period.

As the tenants' application was successful I also find that they are entitled to recover the \$100.00 filing fee for this application.

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$1,050.00 against the landlords. The tenants are provided with a Monetary Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords fail to comply with this Order, this 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: July 19, 2017

Residential Tenancy Branch