



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenants' application pursuant to section 67 of the *Residential Tenancy Act* (the *Act*) for authorization to obtain a return of all or a portion of their security deposit pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

The landlords confirmed receipt of the tenants' application for dispute resolution hearing package ("Application"). In accordance with section 89 of the *Act*, I find the landlord duly served with the tenants' Application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Are the tenants entitled to the return of their security deposit pursuant to section 38 of the *Act*?

Background and Evidence

This began in February of 2015, and ended by way of a mutual agreement to end this tenancy on September 6, 2016. The Mutual Agreement was signed on August 25, 2016 by both parties, including KW and PW, who were both appointed on October 22, 2012 to act as Power of Attorney on behalf of the landlords in relation to this property. A copy of the "Full and Final Mutual Release" was included in the landlords' evidence.

The tenants testified that as part of the mutual agreement, the landlords were to pay to the tenants a total of \$5,040.00. The tenants testified that the landlords failed to follow through with Term #3 of the Mutual Agreement, and withheld the \$1,400.00 security deposit, returning only \$3,640.00 to them.

Term #3 of the Mutual Agreement reads as follows:

Provided that the Releasor returns all keys in the Releasor's possession for the rental property to the Releasee on September 6, 2016, then, by 5:00 p.m. on September 8, 2016, the Releasee shall deliver to the Releasor

- a) \$2,800.00 in damages;*
- b) the Releasor's security deposit in the amount of \$1,400.00; and*
- c) the Releasor's pet damage deposit in the amount of \$1,400.00, minus the \$560.00 rent referred to at paragraph #2 herein;*

The landlords did not dispute the fact that they had retained the \$1,400.00, stating that they had applied before the RTB to retain it in satisfaction of damages caused by the tenants. The landlords applied to retain this deposit, and a hearing was held on March 22, 2017 to deal with the landlord's application. This Application was filed on January 30, 2017, but was not heard by the Arbitrator on March 22, 2017. The Arbitrator dismissed the landlords' application to retain the security deposit, without leave to re-apply as noted below:

"Although the first clause allows the parties to make claims in relation to the security deposit and pet deposit, this term #3 requires that the landlords return the full security deposit and the remainder of the pet deposit, if the keys are returned on September 6, 2016, and therefore it is my finding that the parties were limited to making a claim in relation to the deposits, only if the keys were not returned as agreed upon, on September 6, 2016.

Therefore, since the keys were returned on September 6, 2016, and since the parties had agreed to file no other claims, it is my decision that the landlords do not have a right to file any monetary claims against the tenants.

It is my decision that the parties are barred from filing any further claims against each other, by the terms of the FULL AND FINAL MUTUAL RELEASE, and therefore I will not issue any monetary orders in this matter... This application is dismissed in full without leave to reapply."

The tenants testified that as of the date of this hearing, the landlords are still in possession of the \$1,400.00 security deposit despite the signed Mutual Agreement and decision of the Arbitrator on March 22, 2017. They did not give written authorization to allow the landlords to retain the security deposit, and are requesting an order for the landlords to return the \$1,400.00 to them. The landlords confirmed that they kept the \$1,400.00, and it is still in their possession. Both parties acknowledge that a forwarding address was provided by the tenants on September 6, 2016.

Analysis

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "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."

In this case, I find that the landlords have not returned the tenants' security deposit within 15 days of the end of this tenancy, September 6, 2016, or by the date agreed to in the Mutual Agreement, September 8, 2016. The landlords applied to retain the \$1,400.00 from the tenants, and the landlords' application was dismissed without leave to reapply. On this basis, I find that the tenants are entitled to the return of their \$1,400.00 security deposit as agreed to in the Mutual Agreement signed by both parties. I order that the landlords return \$1,400.00 to the tenants.

As the tenants were successful in their application, I find that the tenants are also entitled to recover the filing fee from the landlords.

Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$1,500.00, which allows the tenants to recover the original security deposit, plus recover the filing fee for this application.

The tenants are provided with this 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 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: August 2, 2017

Residential Tenancy Branch