



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL, MT, DRI, ERP, RP, FF

Introduction:

On June 05, 2017 the Tenants submitted an Application for Dispute Resolution filed by the Tenants in which the Tenants applied to cancel a Notice to End Tenancy for Landlord's Use of Property; for more time to apply to cancel a Notice to End Tenancy; to dispute a rent increase; for an Order requiring the Landlord to make repairs; for the return of the security deposit, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)*; and to recover the fee for filing this Application for Dispute Resolution.

The female Tenant stated that she did not intend to apply to cancel a Notice to End Tenancy for Landlord's Use of Property. I therefore find there is no need to consider whether this Notice to End Tenancy should be cancelled or whether I should grant the Tenants more time to apply to cancel a Notice to End Tenancy.

During the hearing the Tenants withdrew the application for compensation for a damaged fish tank pump, as the Landlord has compensated the Tenants for that item.

The female Tenant stated that on June 09, 2017 the Application for Dispute Resolution, the Notice of Hearing, 38 pages of evidence that were submitted with the Application were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On July 21, 2017 the Tenants submitted 4 pages of evidence to the Residential Tenancy Branch. The female Tenant stated that this evidence was served to the Landlord, via registered mail, on July 21, 2017. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Preliminary Matter #1

During the hearing the female Tenant stated that she is not disputing a rent increase. Rather, she is disputing the Landlord's attempt to collect past utilities.

The Landlord acknowledged that she is attempting to collect unpaid utilities, which is the subject of her Application for Dispute Resolution that is scheduled to be heard in 2018.

As the Tenants are not disputing an additional rent increase, I find there is no need to consider a rent increase at these proceedings.

As the Tenant does not need to refute a claim for unpaid utilities until the Landlord attempts to collect it, I find there is no need to consider a rent increase at these proceedings. Rather, I find that is a matter that will be considered when the Landlord's Application for Dispute Resolution is considered in 2018.

Preliminary Matter #2

As the rental unit has vacated and the Tenants no longer have a legal interest in the rental unit, I find it is not necessary to consider their application for an Order requiring the Landlord to make repairs to the rental unit.

Issue(s) to be Decided:

Should the security deposit be returned to the Tenants?

Background and Evidence:

The Landlord and the Tenants agree that:

- the tenancy began in 2013;
- at the end of the tenancy the rent was \$1,037.00 in rent;
- the Tenants agreed to pay 75% of utility bills that exceeded \$325.00;
- the tenancy ended on June 30, 2017;
- a security deposit of \$500.00 was paid;

- the Tenants provided a forwarding address, in writing, to the Landlord's sister on June 30, 2017;
- the Tenants did not authorize the Landlord to retain any portion of the security deposit; and
- the Landlord did not return any portion of the security deposit.

The Landlord stated that she filed an Application for Dispute Resolution claiming against the security deposit on July 14, 2017.

Analysis:

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

As this tenancy ended on June 30, 2017 and the Tenants filed this Application for Dispute Resolution on June 05, 2017, I find that the Tenants' application to recover the security deposit was filed prematurely. I therefore find that the Tenants' application to recover the security deposit is dismissed, with leave to reapply.

Although at the hearing I told the parties I was inclined to return the deposit, upon reflection I have concluded that would not be appropriate. As the premature filing of the claim prevented the Landlord from making a claim against it in accordance with section 38(1) of the *Act*, I find it would be unfair to the Landlord to order the return of the deposit until her application to retain the deposit is heard in 2018.

The Tenants retain the right to file another Application for Dispute Resolution if the disposition of the deposit is not determined following the conclusion of the Landlord's Application for Dispute Resolution.

I find that the Tenants have failed to establish the merit of their Application for Dispute Resolution and I dismiss their claim to recover the fee paid to file this Application.

Conclusion:

The Application for Dispute Resolution is dismissed, with leave to claim against the security deposit if the disposition of the deposit is not determined following the conclusion of the Landlord's Application for Dispute Resolution.

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 03, 2017

Residential Tenancy Branch