



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened as a result of the tenants' application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "Act"). The tenants applied for the return of double their security deposit and for the recovery of the cost of the filing fee.

The tenants and the previous owner of the property, B.A. (the "owner") appeared at the teleconference hearing and gave affirmed testimony. The owner claims that the named respondent landlord L.Y.Z was acting on the former owners behalf when she created the tenancy agreement with the tenants. This is not supported by the tenancy agreement as the landlord's service address is indicated as "landlord" and not "landlord's agent". I accept that L.Y.Z. requested the owner to act on her behalf for this hearing however so the hearing continued. During the hearing the parties presented their evidence. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

Neither party raised any concerns regarding the service of documentary evidence.

Preliminary and Procedural Matter

At the outset of the hearing, the owner was informed that although he submitted a Monetary Order Worksheet in evidence, that the Rules of Procedure do not permit the respondent to make an application for monetary compensation through the applicant's Application for Dispute Resolution. As a result, the owner was advised that should he wish to submit a monetary claim that the owner(s) would require their own application that will be assigned a file number and to which a filing fee would be required. The owner confirmed that he understood that I would not be considering the respondent's evidence related to their Monetary Order Worksheet as a result as that matter is not properly before me and has not been considered as a result.

Issue to be Decided

- Are the tenants entitled to the return of double their security deposit under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on October 1, 2016 and the parties agreed the tenancy ended by mutual agreement on March 4, 2017. Monthly rent during the tenancy was \$1,800.00 and was due on the first day of each month. A security deposit of \$1,800.00 was paid by the tenants at the start of the tenancy which exceeds the allowable 50% amount for a security deposit and will be addressed later in this decision.

Although the tenants provided a copy of their written forwarding address dated March 1, 2017 the tenants could not recall the date in which they mailed the landlord their written forwarding address. The tenants were asked if they mailed the written forwarding address by registered mail to which they agreed they had however neither tenant could provide a valid tracking number for the written forwarding address. The only registered mail tracking number provided was for the Notice of Hearing, Application and documentary evidence.

The owner testified that he only received the tenants' written forwarding address as part of the evidence package for their application and had not been served with it previously.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Tenants' claim for the return of double the security deposit – I find that the tenants' application is premature, due to the fact that I find the tenants have provided insufficient evidence to support that they had mailed their written forwarding address to the landlord prior to making their application. As a result, **I dismiss** the tenants' application **with leave to reapply**. Given the above, the landlord has been informed that I find that the date of the hearing, August 24, 2017 is the date the landlord has received the tenants' written forwarding address which was also confirmed with the parties during the hearing.

I ORDER the landlord to return the tenants' **\$1,800.00** security deposit in full within 15 days of August 24, 2017 as a result of the owner confirming during the hearing that a move-in condition inspection report was not completed at the start of the tenancy and as a result, the landlord has extinguished all rights towards the tenants' security deposit. Should the landlord fail to comply with my order above, the tenants are at liberty to reapply for double the return of their security deposit.

As the tenants' application is premature, I do not grant the tenant the recovery of the filing fee.

I will now address the amount of the security deposit. I find the landlord breached section 19 of the *Act* which limits the amount of a security deposit to $\frac{1}{2}$ or 50% of the monthly rent. In the matter before me, the maximum amount of the security deposit should have been \$900.00 and instead the landlord requested and received \$1,800.00. Therefore, I caution the landlord that failure to comply with section 19 of the *Act* could lead to a recommendation for an administrative penalty under the *Act*. The maximum penalty for an administrative penalty under section 94.2 of the *Act* is \$5,000.00 per day and may be imposed for each day the contravention or failure continues.

Conclusion

The tenant's application is premature and is dismissed with leave to reapply.

The landlord has been ordered to return the tenants' security deposit within 15 days of August 24, 2017 which was the date of the hearing. Should the landlord fail to return the tenants' full \$1,800.00 security deposit, the tenants are at liberty to reapply for double the return of their full security deposit.

As the landlord has breached section 19 of the *Act* the landlord has been cautioned to comply with section 19 in the future, otherwise a recommendation for an administrative penalty could occur which has been described further above.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 25, 2017

Residential Tenancy Branch