



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RPP MNDC MNSD FF

Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit, including double the amount, pursuant to section 38;
- an order requiring the landlord to return the tenant's personal property pursuant to section 65;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

Issues

Are the tenants entitled to a monetary order for compensation for damage or loss as the result of the landlord failing to return the tenants personal property?

Are the tenants entitled to a return of all or a portion of their security deposit?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy ended on June 1, 2017. The tenants paid a security deposit of \$800.00 at the start of the tenancy which the landlord continues to retain.

The tenants are claiming a return the security deposit. The tenants sent a letter to the landlord dated June 25, 2017 by which they requested a return of their security deposit and return f various personal property. The letter did not include a forwarding address,

The landlord argued a forwarding address was not provided in writing by the tenants but rather just verbally during the moving process.

The tenants argue the landlord received the forwarding address in writing by way of their application for dispute resolution.

The tenants have not provided any evidence with respect to proof of purchase or ownership of the various personal property items for which they seek reimbursement or any invoices or receipts to establish the value of these items.

The landlord submitted various evidence of damage and expenses incurred and is requesting compensation as a counter claim. The landlord has not filed her own application for dispute resolution.

Analysis

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later.

The tenant is relying on the service of the application for dispute resolution as the method of providing the landlord with a forwarding address for the purpose of requesting a return of the security deposit. An application for dispute resolution does not meet the requirement of a separate written notice of providing a forwarding address for the purposes of return of the security deposit. The tenant did not provide any evidence that a forwarding address was provided to the landlord aside from in the dispute application.

I dismiss the tenants claim for return of the security deposit with leave to reapply after the tenant serves the landlord with a forwarding address in writing as required under the Act.

The landlord has not filed her own application so the landlords counter claim for damages was not addressed in this hearing.

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement.

Residential Tenancy Policy Guideline #16 "Compensation for Damage or Loss" provides the following guidance:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The tenants have not provided any evidence in support the amount of or value of the damage or loss claimed such as receipts or invoices as proof of purchase or replacement costs.

The tenants claim for compensation for loss resulting out of the landlord's failure to return personal property is dismissed without leave to reapply.

As the tenants were not successful in this application, I find that the tenants are not entitled to recover the \$100.00 filing fee paid for this application from the landlord.

Conclusion

I dismiss the tenants' application for return of the security deposit with leave to reapply after the tenant serves the landlord with a forwarding address in writing as required under the Act.

The tenants' application pertaining to compensation for loss resulting out of the landlord's failure to return personal property is dismissed without leave to reapply. 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 28, 2017

Residential Tenancy Branch