



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution wherein the Tenants sought return of double the security deposit paid and recovery of the filing fee.

The hearing was conducted by teleconference on September 26, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to return of double the security deposit paid?
2. Should the Tenants recover the filing fee paid?

Background and Evidence

The Tenant stated that the two year fixed tenancy was to begin April 1, 2017. A copy of the residential tenancy agreement (signed March 16, 2017) was provided in evidence

and which indicated monthly rent was payable in the amount of \$1,850.00 and the Tenants paid a \$925.00 security deposit.

The Tenant, H.B., testified that they did not move into the rental unit as there was a dispute between the Landlord and the previous tenant; additionally, he stated that they were not able to move in as they intended operate a day care in the rental unit and this was made not possible as the previous tenants' items remained in the unit.

Introduced in evidence was a copy of a letter from the Tenants to the Landlords dated March 31, 2017 wherein the Tenants gave notice to end the tenancy April 1, 2017. In this letter the Tenants indicate that they informed the Landlords on March 22, 2017 that they would not be moving into the rental unit. Also introduced in evidence was a copy of text communication between the parties dated March 28, 2017 wherein the Tenants write that they informed the Landlords on March 22 that they would not be moving into the rental unit on

H.B. stated that on April 6, 2017 the Tenants gave the Landlords their forwarding address. A copy of this letter was provided in evidence.

H.B. further stated that when they came back to the rental property on March 31, 2017 it was already occupied by other renters. He claimed that the Landlord, N.H., informed them that the rental unit was occupied as of April 1, 2017; he stated that he had a recording of N.H. saying this, although the recording was not in evidence.

The Landlord, K.H., responded to the Tenants' claim as follows. He stated that he tried to return the deposit to the Tenants on May 6, 2017 but they refused the cheque. He confirmed that he did not make an application for dispute resolution as he claimed he was informed by the Branch that he only needed to show up at the Branch on the hearing date (notably he called into the hearing from the branch office). He further stated that he did not receive the Tenants' forwarding address.

The Landlord testified that he re-rented the rental unit as of April 15, 2017.

Analysis

The Tenants make an application for return of double their deposit pursuant to section 38 of the *Residential Tenancy Act* which provides as follows:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord, and
- (b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a) 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, or
- (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

I accept the Tenants evidence that they did not agree to the Landlords retaining any portion of their security deposit.

I find that the Landlords received the Tenants' forwarding address in writing on April 6, 2017. I am persuaded by the letter provided in evidence by the Tenants and accept their testimony that they provided this letter to the Landlords on that date.

The Landlords failed to apply for arbitration, within 15 days of receipt of the Tenants' forwarding address as required under section 38(1) of the *Act*. I do not accept the Landlord's testimony that he was informed by staff at the Residential Tenancy Branch that he need not make an application to retain the funds as this is contrary to the *Act*.

The security deposit is held in trust for the Tenants by the Landlords. The Landlords may only keep all, or a portion, of the security deposit through the authority of the *Act*, such as the written agreement of the Tenants an Order from an Arbitrator. If the Landlords believe they are entitled to monetary compensation from the Tenants, they must either obtain the Tenant's consent to such deductions, or obtain an Order from an Arbitrator authorizing them to retain a portion of the Tenants' security deposit. Here the Landlords did not have any authority under the *Act* to keep any portion of the security deposit.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the *Act*, that the Landlords pay the Tenants the sum of **\$1,850.00**, comprised of double the security deposit (2 x \$950.00). As the Tenants have been successful, I also award the Tenants recovery of the **\$100.00** fee for filing this Application.

The parties both gave evidence as to when the rental unit was re-rented. As noted during the hearing, a tenant may end a tenancy provided that the notice complies with sections 45 and 52 of the *Act*, which provide as follows:

Tenant's notice

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
- (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that
 - (a) is not earlier than one month after the date the landlord receives the notice,
 - (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
 - (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
- (3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.
- (4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

Form and content of notice to end tenancy

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and
 - (e) when given by a landlord, be in the approved form.

While the Tenants may have verbally informed the Landlords of their intention not to occupy the rental unit at an earlier date, the evidence indicates the Tenants gave *written* notice to end their tenancy on March 31, 2017; pursuant to the above, the effective date of their notice is April 30, 2017.

Consequently, the Landlords may have a monetary claim for unpaid rent for April 2017. The Tenants claim the unit was re-rented as of April 1, 2017 such that the Landlords suffered no loss of rental income; the Landlord testified they re-rented it as of April 15, 2017. As there was no claim before me by the Landlords, I make no findings as to the date the unit was re-rented, nor do I make any findings with respect to any possible

claim the Landlords may have. As noted, should the Landlords believe they are entitled to monetary compensation from the Tenants they are at liberty to make an application for dispute resolution; they cannot make a claim through the Tenants' application.

Conclusion

The Tenants are given a formal Monetary Order in the amount of **\$1,950.00** and must serve the Order on the Landlords as soon as possible. Should the Landlords fail to comply with this Order, the 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: September 26, 2017

Residential Tenancy Branch