



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with a tenants' application for Monetary Order for return of double the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Are the tenants entitled to return of double the security deposit?

Background and Evidence

The parties executed a tenancy agreement on March 4, 2017 for a tenancy set to commence on April 1, 2017. The tenants paid a security deposit of \$1,900.00 and under the terms of the tenancy agreement the tenants were required to pay monthly rent of \$3,800.00.

On March 13, 2017 the tenant asked the landlords to terminate the tenancy agreement for personal reasons and the landlord agreed to terminate the agreement. In the days that followed the tenant requested return of the security deposit in a text message but the landlords did not agree to do so. The male tenant also spoke with the landlord and the landlord explained that the security deposit would not be returned as a loss of rent may be suffered for the month of April 2017.

On April 3, 2017 the tenants sent a registered letter to the landlord requesting return of the security deposit. Upon receipt of the letter the landlord did not respond to the tenants or refund the security deposit or file an Application for Dispute Resolution to claim against it.

During the hearing the landlords allege that they suffered a loss of rent for April 2017. The landlords have not made any claim against the tenants and the time to make a claim against the security deposit has passed. Accordingly, I informed the parties that it was not before me to determine whether the landlords are entitled to recover loss of rent from the tenants; however, the parties were given two opportunities during the hearing to try to reach a settlement agreement. An agreement was not reached and I informed the parties that I will make a decision on the tenants' application and that the landlords remain at liberty to file their own Application for Dispute Resolution against the tenants if they so choose. The landlords indicated that they now understood the process.

Analysis

Section 38(1) of the Act provides that unless a landlord has a legal right to retain the security deposit, a landlord must either return the security deposit to the tenant or make an Application for Dispute Resolution to claim against it within 15 days from the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing, whichever day is later. The legal right to retain the security deposit includes the tenant's written consent or the authorization from an Arbitrator.

Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit.

In this case, the landlords did not have the tenant's written consent to retain the security deposit and did not obtain the authorization of an Arbitrator to do so. The landlords were provided a forwarding address in writing by way of registered mail sent on April 3, 2017 and the landlords did not return the security deposit or file an Application for Dispute Resolution to claim against the deposit within 15 days of receiving the forwarding address. Therefore, I find the landlords violated section 38(1) of the Act and must now pay the tenants double the security deposit in the amount of \$3,800.00 as requested.

I further award the tenants recovery of the \$100.00 filing fee they paid for this Application.

In light of all of the above, I provide the tenants with a Monetary Order in the sum of \$3,900.00 to serve and enforce upon the landlords.

Conclusion

The tenants are provided a Monetary Order in the sum of \$3,900.00 to serve and enforce upon the landlords.

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 29, 2017

Residential Tenancy Branch