



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OLC, FF

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for the return of the security deposit - Section 38;
2. An Order for the Landlord’s compliance with the Act or tenancy agreement - Section 62; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and the Tenant’s Agent (the “Agent”) were each given full opportunity under oath to be heard, to present evidence and to make submissions. As the tenancy ended and as an order for compliance is only relevant to an ongoing tenancy I dismiss the claim for the Landlord’s compliance.

Issue(s) to be Decided

Did the Tenants pay a security deposit?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

There is no written tenancy agreement. The Agent does not know the start date of the tenancy. The Agent is not sure about the end date of the tenancy. The Agent does not know how much rent was paid. The Agent states that a security deposit of \$700.00 was paid to the Landlord. The Agent provides an email dated September 4, 2013 as evidence of the payment of a security deposit. This email from Tenant VD sets out as follows: “I am in the interior for work until next week and I am [hoping you will accept the remainder of my deposit then.]” I have inserted brackets around the portion of the email that is in a different font, different size and in a lighter ink.

The Landlord states that the tenancy started on September 1, 2013 and ended April 30, 2017. The Landlord states that no amount of a security deposit was collected as the Tenants kept postponing its payment with different excuses. The Landlord states that after many months he just let it go.

Analysis

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. The Agent did not have knowledge of basic details of the tenancy. The email setting out a remaining deposit appears to have been written over or changed. The Tenants provided no evidence of payment such as a cancelled cheque or banking statement showing a cash withdrawal. The Tenants did not appear to provide direct evidence of payment. For these reasons I prefer the Landlord's direct and persuasive evidence and find that the Tenants have not on a balance of probabilities substantiated that any amount of a security deposit was paid. As no security deposit was paid I find that the Landlord has not breached any section of the Act or tenancy agreement in relation to the return of a security deposit. As the claim has not been successful I decline to award recovery of the filing fee and in effect the application is dismissed in its entirety.

Conclusion

The application is dismissed.

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: November 08, 2017

Residential Tenancy Branch