



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 dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of double the value of the security and pet damage deposits (collectively "deposits"), pursuant to section 38;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application, pursuant to section 72.

"Tenant HK" did not attend this hearing, which lasted approximately 47 minutes. The landlord and tenant RK ("tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant confirmed that he had permission to speak on behalf of tenant HK, as an agent at this hearing.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application and both tenants were duly served with the landlord's written evidence package.

The tenant did not provide any submissions regarding the tenants' application for an order for the landlord to comply with the *Act*, *Regulation* or tenancy agreement. Accordingly, this claim is dismissed without leave to reapply.

Issues to be Decided

Are the tenants entitled to a return of their deposits?

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

Background and Evidence

Both parties agreed to the following facts. This tenancy began on September 12, 2016 and ended on May 29, 2017. Monthly rent in the amount of \$2,350.00 was payable on the first day of each month. A security deposit of \$1,175.00 and a pet damage deposit of \$1,175.00, totalling \$2,350.00, were paid by the tenants to the landlord. The landlord returned \$2,200.00 from both deposits to the tenants by way of a certified cheque, dated December 1, 2017, that has not yet been cashed by the tenants but is still in their possession. The landlord provided a copy of this certified cheque. Both parties signed a written tenancy agreement and a copy was provided for this hearing.

The landlord said that a move-in condition inspection report was completed but the tenant claimed that he never signed anything. The landlord confirmed that no move-out condition inspection report was completed. The tenant testified that the landlord was provided with a written forwarding address on June 1, 2017, by way of email. The landlord stated that the tenants did not provide written permission to the landlord to keep any amount from the deposits. The landlord confirmed that she did not file an application to retain the deposits.

The tenants seek a return of their security deposit of \$1,175.00 and pet damage deposit of \$1,175.00 and to recover the \$100.00 filing fee paid for this application.

Analysis

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the submissions and arguments are reproduced here. The principal aspects of the tenants' claims and my findings are set out below.

Section 38 of the *Act* requires the landlord to either return the tenants' deposits or file for dispute resolution for authorization to retain the deposits, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposits. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the deposits to offset damages or losses arising

out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

The tenancy ended on May 29, 2017. The tenants did not give the landlord written permission to keep any part of their deposits. The landlord did not return the deposits in full or file an application to retain them.

I find that the tenants did not serve the landlord with a written forwarding address in accordance with section 88 of the *Act*. They sent it to the landlord by way of email, which is not permitted by section 88 of the *Act*. Therefore, I find that the doubling provision of section 38 of the *Act* has not yet been triggered. I find that the tenants are not entitled to the return of double the value of their deposits.

Over the period of this tenancy, no interest is payable on the landlord's retention of the tenants' deposits. In accordance with section 38(6)(b) of the *Act*, I find that the tenants are only entitled to a return of the original amount of their deposits, totalling \$2,350.00, from the landlord.

Since the landlord has already returned \$2,200.00 to the tenants by way of a certified bank cheque, as confirmed in her documentary evidence, I order the tenants to cash that cheque, which the tenant confirmed is still in his possession. The cheque is already certified by the bank and addressed in the name of both tenants, as displayed in the landlord's documentary evidence. If the tenants encounter an issue with cashing that cheque, they may reapply for dispute resolution to obtain a monetary order for the \$2,200.00. I provide a monetary order to the tenants for the balance of the \$150.00 for the remainder of the deposits.

As the tenants were only partially successful in this application, I find that they are not entitled to recover the \$100.00 filing fee from the landlord. This claim is dismissed without leave to reapply.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of \$150.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the

landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The tenants' application to recover the \$100.00 application filing fee and for an order requiring the landlord to comply with the *Act, Regulation* or tenancy agreement, 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: December 27, 2017

Residential Tenancy Branch