



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* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act;
- an order requiring the landlords to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenants did not submit any documentary evidence. The landlord confirmed receipt of the tenants' notice of hearing package and stated that their documentary evidence package was served to both tenants via Canada Post Registered Mail on January 21, 2018. The tenants' confirmed receipt of the landlord's documentary evidence package. Neither party raised any issues with service. I accept the undisputed affirmed testimony of both parties and find that both parties have been properly served with the notice of hearing package and the submitted documentary evidence and are deemed sufficiently served as per section 90 of the Act.

At the outset the tenants clarified that they were unaware of the hearing being conducted via conference call and as such cancel a portion of their monetary claim for the loss of wages for both tenants. As such, the hearing shall proceed only on the tenants request for return of double the security deposit and recovery of the filing fee. I

note for clarify that litigation costs are not recoverable under the Act even had this hearing been conducted in person.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for return of double the security deposit and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed that this tenancy began on February 1, 2014 on a month-to-month basis as per the submitted copy of the signed tenancy agreement. This was a month-to-month tenancy in which the monthly rent was \$800.00 payable on the 1st day of each month. A security deposit of \$400.00 was paid on February 1, 2014.

Both parties agreed that the security deposit was later increased to \$525.00.

The tenants seek a monetary claim of \$1,150.00 which consists of:

\$525.00	Return of Original Security Deposit
\$525.00	Compensation, Fail to Comply Sec. 38.
\$100.00	Recovery of Filing Fee

Both parties confirmed that this tenancy ended on December 31, 2014. Both parties confirmed that the tenants provided their forwarding address in writing to the landlord on July 1, 2017.

The landlord claims that after the tenancy ended, the tenants failed to provide their forwarding address in writing.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security and/or pet damage deposit(s) or file for dispute resolution for authorization to retain the security and/or pet damage deposit(s) within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord

is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security and/or pet damage deposit(s).

In this case, both parties confirmed that the tenancy ended on December 31, 2014 and that the tenants provided their forwarding address in writing to the landlords on July 1, 2017, approximately 2 ½ years later.

Section 39 of the Act states that if a tenant does not give a landlord a forwarding address in writing within 1 year after the end of tenancy the landlord may keep the security deposit and the tenant's right to return of the security deposit is extinguished.

As such, I find based upon the undisputed affirmed testimony of both parties that the tenants have extinguished their right to the security deposit.

Conclusion

The tenants' 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: February 09, 2018

Residential Tenancy Branch