



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of double the amount of the security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord did not attend this hearing, which lasted approximately 26 minutes. The two tenants, female tenant ("tenant") and "male 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 testified that the landlord was served twice with the tenants' application for dispute resolution hearing package both on January 25, 2018, both by way of registered mail. The tenants provided a copy of one Canada Post receipt and tracking number with their application and provided another Canada Post tracking number verbally during the hearing. The tenants claimed that they sent it to the address provided by the landlord in the parties' written tenancy agreement. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenants' application on January 30, 2018, five days after their registered mailings.

At the outset of the hearing, the tenants confirmed that they did not wish to pursue their claim of \$60.00 for the heating bill from the landlord. I notified them that this portion of their application was dismissed without leave to reapply and they confirmed their agreement and understanding of same.

Issues to be Decided

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to a return of double the amount of their security deposit?

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

Background and Evidence

The tenant testified regarding the following facts. This tenancy began on September 1, 2016 and ended on December 15, 2017. Monthly rent in the amount of \$1,500.00 was payable on the first day of each month. A security deposit of \$750.00 was paid by the tenants and the landlord continues to retain this deposit in full. Both parties signed a written tenancy agreement and a copy was provided for this hearing.

The tenant said that the landlord completed a move-in condition inspection and report but did not complete a move-out condition inspection or report for this tenancy. She stated that the tenants provided a written forwarding address to the landlord on December 30, 2017 by way of a text message. The tenants did not provide a copy of this text message. The tenant claimed that no written permission was provided by the tenants to the landlord to keep any amount from the security deposit. She said that the tenants did not receive an application for dispute resolution from the landlord to keep any part of the security deposit.

The tenants seek a return of double the amount of their security deposit of \$750.00, totalling \$1,500.00, plus \$250.00 for an overpayment of December 2017 rent, and the \$100.00 filing fee paid for this application.

The tenant claimed that the tenants paid rent of \$1,000.00 to the landlord on December 1, 2017, in order for the tenants to have possession and use of the rental unit from December 1 to 20, 2017. The tenants did not provide a copy of the e-transfer statement for this payment, that they said they had in their possession during the hearing. The tenant said that the landlord agreed for the tenants to move by December 15 and to have until December 20 to clean the unit before the landlord re-rented it to new tenants. She stated that the landlord then insisted that the tenants move by December 15 and he re-rented the unit to new tenants on the morning of December 16, so the tenants did not

have use of it until December 20. The tenants provided a text message that they sent to the landlord regarding the above information. The tenant explained that because the tenants only had use of the rental unit from December 1 to 15, they should only have to pay a half month's rent of \$750.00, rather than \$1,000.00 for rent. The tenants seek a refund of the \$250.00 overpayment to the landlord.

Analysis

While I have turned my mind to the documentary evidence and the testimony of the tenants, 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' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the 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 section 38(6)(b) of the *Act*, equivalent to double the value of the deposit. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings, on a balance of probabilities, based on the undisputed testimony of the tenants. The tenancy ended on December 15, 2017. The tenants did not give the landlord written permission to keep any part of their deposit. The landlord did not return the deposit or file an application to retain it.

I find that the tenants did not provide their written forwarding address to the landlord in accordance with section 38 of the *Act*, as text message is not an allowed method. Therefore, 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 security deposit.

Over the period of this tenancy, no interest is payable on the landlord's retention of the tenants' security deposit. In accordance with section 38(6)(b) of the *Act*, I find that the tenants are entitled to a return of the original amount of their security deposit of \$750.00 from the landlord.

I dismiss the tenants' application for a refund of \$250.00 from their December 2017 rent payment, without leave to reapply. I find that the tenants failed to provide sufficient documentary evidence that they paid \$1,000.00 to the landlord for December 2017 rent. They had a copy of the e-transfer document in front of them during the hearing but did not supply it with their application. As the tenants are the applicants and have the burden to prove their claim on a balance of probabilities, I find that they have failed in this regard.

As the tenants were partially successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of \$850.00 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 remainder of the tenants' application 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: March 26, 2018

Residential Tenancy Branch