Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   MNDSC, MNSD, FF

Introduction

This hearing was convened in response to an application for dispute resolution dated October 23, 207 and amended application dated October 31, 2017 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. A Monetary Order for compensation - Section 67; and

3. An Order to recover the filing fee for this application - Section 72.

Preliminary Matters

The Landlord did not attend the hearing. I accept the Tenant's evidence that the Landlord was served with the application for dispute resolution and notice of hearing (the "Materials") by *registered mail on October 28 or 29, 2017* in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Landlord is deemed to have received the Materials on either November 2 or 3, 2017. I accept the Tenant's evidence that the Landlord was served with the amended application by regular mail on October 31, 2017 in accordance with Section 88 of the Act. This amendment sets out the Tenants' new address for service. The Tenant was given full opportunity to be heard, to present evidence and to make submissions.

It is noted that the Landlord provided evidence to the Residential Tenancy Branch (the "RTB"). The Tenant did not receive any evidence from the Landlord.

Rule 3.15 of the RTB Rules of Procedure provides that any evidence a respondent intends to rely on at the hearing be must be served on the applicant. Based on the Tenant's undisputed evidence of no receipt of any evidence from the Landlord I find that the Landlord did not serve the Tenants with the evidence provided to the RTB. As a result I decline to consider the Landlord's evidence submitted to the RTB.

Issue(s) to be Decided
Are the Tenants entitled to return of the security deposit?
Are the Tenants entitled to the compensation claimed?
Are the Tenants entitled to recovery of the filing fee?

Background and Evidence
The tenancy started on April 1, 2017. Rent of $1,350.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected $1,350.00 as a security deposit. The Tenants did not provide any forwarding address to the Landlord prior to making the application. The Tenant believes that the Landlord received its forwarding address on the application and the amended application. The Tenant claims return of the security deposit.

On September 18, 2017 the Landlord verbally informed the Tenants that they had to move out of the unit by November 1, 2017. The Landlord did not serve the Tenants with any written notice on a form approved by the RTB. The Tenants assumed that the Landlord's verbal notice was the same as the two month notice to end tenancy for landlord's use and on September 22, 2017 the Tenants gave the Landlord notice to end the tenancy for September 30, 2017. The Tenants moved out that day and claim compensation of $1,218.00 for having moved out of the unit.

Analysis

Section 19 of the Act provides that a landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement and if a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted, the tenant may deduct the overpayment from rent or otherwise recover the overpayment. Based on the Tenant's undisputed evidence that the Landlord collected the same amount of security deposit as a month's rent I find that the Landlord collected more security deposit than was allowed under the Act and that the Tenants are therefore entitled to the return of the overpaid amount of **$675.00**.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. As the Tenant did not provide its forwarding address prior to making the application claiming the security deposit I find that the Tenants did not meet the requirements of the Act to have the deposit returned. I therefore dismiss this claim with leave to reapply.

Section 51(1) of the Act provides that a tenant who receives a notice to end a tenancy for landlord's use of the property is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. Section 52 of the Act provides that in order to be effective, a notice to end a tenancy must be in writing and must, inter alia, when given by a landlord, be in the approved form. There is no provision under the Act that allows a landlord to end a tenancy with only a verbal notice. As the Tenants did not receive any written notice on an approved form from the Landlord to end the tenancy for any reason I find that the Landlord did not end the tenancy. As a result I find that the Tenants are not entitled to any compensation and I dismiss the claim.

As the Tenants' claim in relation to the overpaid security deposit had merit I find that the Tenants are entitled to recovery of the **$100.00** filing fee for a total entitlement of **$775.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **$775.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: May 30, 2018

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Residential Tenancy Branch