



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ANDALCO INVESTMENTS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FFT

Introduction

This is an Application for Dispute Resolution (“Application”) filed by the Tenants for the return of double the security deposit because of a tenancy which ended on June 30, 2017.

The Landlord and the Tenant, CM, appeared for the scheduled hearing; CM was representing both Tenants in the Application. I find that the notice of hearing was properly served and that evidence was submitted by all parties. Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present evidence, make submissions, and to cross-examine the other party on the relevant evidence provided in this hearing.

Issue(s) to be Decide

Are the Tenants entitled to a return of double the security deposit, pursuant to section 38 of the *Residential Tenancy Act* (“Act”)?

Are the Tenants entitled to an order for payment of the filing fee in the amount of \$100.00, pursuant to 72 of the Act?

Background and Evidence

The tenancy began on April 1, 2016 and was for a fixed term of 15 months, to revert to a month-to-month tenancy thereafter; the tenancy agreement was submitted into evidence.

The tenancy agreement was between the Tenants and Andalco Investments Inc. The monthly rent was \$2,600.00 payable on the first of each month and a security deposit was paid in the amount of \$1,250.00.

The Landlord states that he purchased the property during the tenancy. He understood that the tenancy was to terminate on June 30, 2017, at the end of the fixed term. The Tenant argues that the fixed term reverted to a monthly tenancy after that date. The Landlord provided the Tenants with a Two-Month Notice to End Tenancy because the Landlord intended to reside in the rental property; the effective date of that notice was June 30, 2017. The Tenant states that they vacated the premises as per the notice.

The Landlord submitted email exchanges which show that there was some discussion about the payment of the June 2017 rent. The Tenants argued that the rent was not to be paid, while the Landlord submitted that he was entitled to the June rent. There was an email from the Tenant, SM, dated July 31, 2017 to the Landlord advising of the forwarding address; the Landlord acknowledged receipt by way of a written response, and used this address to send her evidence prior to this hearing.

By October of 2017, the Tenants had filed an application for return of the security deposit, which the Landlord had retained to cover the June rent that he felt he was entitled to. The Landlord did not file a claim for the security deposit, nor did the Tenants agree to let him retain the money.

On November 14, 2017, the Landlord, who states he was unfamiliar with the rules regarding security deposits as he had never been a landlord prior, paid \$1,250.00 by e-transfer to the Tenant, SM, receipt of which is acknowledged. The Tenants request payment equal to double the security deposit (less that which has been paid to date), along with the filing fee.

Analysis

When a landlord ends a tenancy for landlord's use of property, the landlord must give the tenant the equivalent of one month's rent on or before the effective date of the

landlord's notice; the tenant may choose to keep the last month's rent in lieu of compensation.

I find that the tenancy would have reverted to a month-to-month tenancy at the end of the fixed term period ending June 30, 2017. Accordingly, the only way to end the tenancy was by way of proper notice. The Landlord provided a Two-Month Notice to End the Tenancy so that he could move into the property on June 30, 2017, and the Tenants were allowed one month's rent as compensation for having to move out. There is no application by the Landlord for payment of the June rent, and, in any event, the Tenants are entitled to keep it as a result of the notice to end their tenancy.

I now turn my attention to the matter of the security deposit. Under section 38 of the Act, it states:

“Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), *within 15 days after the later of*

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection]....

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.”
[bolding added]

I find that the Landlord had written notice of the Tenants' forwarding address as of July 31, 2017. The Landlord failed to repay the security deposit or apply to retain the security deposit within 15 days of July 31, 2017; the evidence shows an e-transfer of \$1,250.00 on November 17, 2017, which is well beyond the date required for payment by the Landlord to the Tenants.

Accordingly, as per section 38(6), the Tenants are entitled to receive double the amount of the security deposit in the sum of \$2,500.00, less the \$1,250.00 paid to date, for a final total of \$1,250.00. As the Tenants were successful in their claim, I am awarding the filing fee of \$100.00.

This order must be served on the Landlord and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Landlord fails to make payment. Copies of this order are attached to the Tenants' copy of this Decision.

Conclusion

The Landlord shall pay to the Tenants the sum of \$1,350.00 forthwith.

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 11, 2018

Residential Tenancy Branch