



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

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

- an Order to recover double the amount of the security deposit pursuant to section 38 of the *Act*; and
- recovery of the filing fees from the landlords pursuant to section 72 of the *Act*.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant NE (the "tenant") primarily spoke on behalf of both tenants. The landlord SP (the "landlord") primarily spoke on behalf of both co-landlords. .

As both parties were in attendance service was confirmed. The landlords confirmed receipt of the tenant's application for dispute resolution and evidence. The tenants confirmed receipt of the landlord's evidentiary materials. Based on the undisputed testimonies I find that the parties were each served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to double the value of the security deposit?

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

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 tenants' claims and my findings around each are set out below.

The parties agree on the following facts. This tenancy began in March, 2016 and ended in August, 2017. A security deposit of \$872.50 was paid at the start of the tenancy. The parties prepared a condition inspection report at the start of the tenancy and at the end of the tenancy.

The copy of the condition inspection report submitted into documentary evidence is signed by the parties. The tenants give written authorization that the landlord may deduct from the security deposit \$170.00 for cleaning costs and an unspecified sum for outstanding utilities. A forwarding address for the tenants is provided.

The landlord testified that the total for outstanding utilities was \$126.92. While the tenants initially questioned the accuracy of the sum deducted for utilities as the landlord did not submit all of the invoices into written evidence, they accepted the figure as correct.

The tenants submit that the landlords were obligated to return the balance of the security deposit in the amount of \$575.38 within 15 days of the end of the tenancy. The tenant said they provided their forwarding address on the condition inspection report completed at the end of the tenancy. The tenant testified that the landlords did not provide them with the security deposit or a copy of the condition inspection report within the timeframe provided under the *Act*. The tenant said that they received a cheque in the amount of \$560.58 from the landlords in October and the first instance where they were provided a copy of the condition inspection report was with the evidence package for the present hearing.

The landlord testified that they mailed the completed condition inspection report and the balance of the security deposit in the amount of \$575.38 to the forwarding address provided by the tenants in early September, within the 15 days provided under the *Act*. The landlord said that they were subsequently contacted by the tenant who said they had not received the security deposit. Upon discussion with the tenants the parties came to realize that a digit in the forwarding address which the landlords interpreted as a "7" was meant to be read "2".

The landlord testified that they put a stop payment on the first cheque and issued a second cheque to the confirmed address in the amount of \$560.58, the balance of the

security deposit less the stop payment charge. The tenants confirmed they received this cheque in October, 2018.

The tenants question the landlords' evidence that they mailed an initial payment of \$575.38 or that there was a stop payment placed on that cheque as no documentary evidence was submitted. The tenants submit that the return of the security deposit of \$560.58 did not arrive within the 15 days provided under the Act and deducts an additional \$15.00 for a stop payment for which they did not provide written consent.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

In the matter at hand the parties provided undisputed evidence that they prepared a condition inspection report at the end of the tenancy together. The tenants provided written authorization that of the \$872.50 security deposit, the landlords may retain \$170.00 for cleaning costs and a sum for outstanding utilities. I accept the evidence of the parties that the amount of outstanding utilities was \$126.92.

The landlord testified that the balance of the security deposit was mailed to the tenants at the forwarding address provided within the 15 day timeline. The landlord said that they read a digit on the forwarding address as "7" and were only later informed by the tenants that it was meant to be "2". The landlord submits that they deducted the amount of \$15.00 for a stop payment fee incurred and issued a second cheque returning the security deposit to the tenants.

In making my determination I turn first to the question of credibility. I have considered the testimonies of the parties, their content and demeanor as well as whether it is consistent with the other evidence and circumstances of this tenancy.

I find the landlords' evidence to be consistent, reasonable and supported in the documentary evidence. Upon review of the condition inspection report it is clear that

the forwarding address provided by the tenants contains a digit which appears to be a "7". The forwarding address has another "2" elsewhere and the two figures are clearly different.

While the landlord did not have documentary evidence in support of their position that they mailed the security deposit in September, 2017 I find their explanation that it was sent by regular mail without tracking information to be reasonable. The landlords participated in a move-out inspection and prepared a condition inspection report in accordance with the *Act* and regulations. I find that it is reasonable to conclude that the landlords would have continued to act in accordance with the legislation by issuing the balance of the security deposit to the tenants within the 15 days allotted. I accept the landlords' evidence that they issued a return of the security deposit to the forwarding address documented within the 15 days provided under the *Act*.

The undisputed evidence is that the tenants did not receive the return of the security deposit until October, 2017. Based on the evidence I find that this delay was caused by the tenants. The forwarding address provided by the tenants on the condition inspection report was unclear. It is the responsibility of the party providing information such as an address to do so in a clear fashion that does not give rise to confusion. I find that the landlords mailed the security deposit to the address provided in accordance with the *Act* and the funds were not received due to the tenants' own actions.

I accept the landlord's testimony that they incurred a cost of \$15.00 for issuing a stop payment order. While the landlord did not submit written evidence of the charge I find the amount to be consistent with what would be expected from a financial institution. I accept the landlord's testimony that this fee was incurred due to the tenants' request that the security deposit be re-issued. I find that the landlord was entitled to withhold that amount from the security deposit.

Based on the evidence I find that the landlords have fulfilled their statutory requirement to return the security deposit to the tenants within 15 days of the end of the tenancy. I find that any delay in the tenant's receipt of the deposit to have been a result of the tenants' actions and not a circumstance that gives rise to the requirement pursuant to section 38(6) of the *Act* to provide double the amount of the deposit.

I find that the landlord was entitled to withhold the amount of \$311.92 from the security deposit. I accept the undisputed evidence that the tenants were issued the full balance of \$560.58.

As I find that the landlords have fulfilled their obligations under the Act, I dismiss the tenants' application.

Conclusion

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: May 10, 2018

Residential Tenancy Branch