



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT MNSD FFT

Introduction

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

- the return of their security deposit and an amount equivalent to their security deposit pursuant to section 38 of the *Act*; and
- the recovery of the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present, service of documents was confirmed. The landlords testified that they were in receipt of the tenants' application and evidentiary materials, and the tenants confirmed receipt of the landlords' evidentiary materials. Based on the undisputed testimonies of the parties, I find that both parties were served in accordance with section 89 of the *Act*.

Preliminary Issue – Amendment of Tenants' Application

The tenants' application indicated a total requested claim of \$3,450.00. The tenants stated that \$1,850.00 of this claim was for anticipated travel costs in the event they were required to attend this hearing in person. As this hearing was conducted via teleconference, there was no basis for the tenants claim for these costs. As such, the tenants agreed to amend their application to withdraw these costs. The tenants' confirmed that their amended application only pertained to a claim for the return of the security deposit and a monetary award equivalent to this amount, for a total of \$1,600.00, and a request to recover the filing fee for the application.

Pursuant to my authority under section 64(3)(c) of the Act, I amended the tenants' application to reduce the amount of the claim to \$1,600.00 since it would not be prejudicial to the landlords.

Issue(s) to be Decided

Are the tenants entitled to the return of the security deposit? If so, are the tenants entitled to an additional monetary award equivalent to the value of the security deposit because of the landlord's failure to comply with the Act?

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

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. The principal aspects of this matter and my findings are set out below.

Both parties agreed that this tenancy started on February 1, 2018 with monthly rent of \$800.00 payable on the first day of each month. At the beginning of the tenancy, the tenants provided a security deposit in the amount of \$800.00, which the landlords continue to retain. The tenancy ended on March 31, 2018.

The tenants stated that as the monthly rent was \$800.00 the security deposit should only have been \$400.00, yet they were required to pay \$800.00 to the landlords for a security deposit.

The landlords acknowledged that they recently became aware that the Act prohibits a landlord from requiring a security deposit greater than one-half of one month's rent and they have changed their practice accordingly.

The tenants testified that they provided their forwarding address in writing by Canada Post regular mail to the landlords on April 18, 2018, however, they could not provide any evidence to support their claim. The landlords denied receiving the letter with the tenants forwarding address and testified that they only received the tenants forwarding address when they received the tenants Notice of Dispute Resolution Proceeding package for this hearing, around mid-May 2018.

Both parties agreed that the tenants never provided written authorization to the landlords to retain all or a portion of the \$800.00 security deposit.

Both parties agreed that a move-in condition inspection report was never completed or provided to the tenants.

Although the landlords submitted documentary evidence regarding their claims related to rent owed for short notice to end tenancy by the tenants, and for cleaning costs, the landlords confirmed that they had not filed their own application for dispute resolution to retain the security deposit regarding these claims.

I clarified for both parties that the application before me was solely the tenants' application in relation to the return of the security deposit, and that the landlords' evidence regarding any claims to money owed for unpaid rent or damages was not relevant in this matter. However, I explained that the landlords were at liberty to file their own application regarding their claims, within the allowable timelines provided by the *Act*.

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.

Where a tenant seeks the return of the security deposit, the tenant bears the burden to prove when and how a written forwarding address was given to the landlord since a landlord is not required to take action with respect to the security deposit unless a written forwarding address is received from the tenant.

In this case, the landlords disputed receipt of the tenants' written forwarding address and the tenants were unable to provide any evidence of service, such as a registered mail receipt, or email exchange confirming the receipt of the forwarding address by the landlords. Therefore, I find that the tenants' have not sufficiently proven service of their written forwarding address on the landlords.

However, the tenants' Application for Dispute Resolution, contained in their Notice of Dispute Resolution Proceeding package that was served upon the landlords by registered mail on May 12, 2018, contains an "Address for Service of Documents" for

the tenants. The tenants confirmed during the hearing that the address provided in their application for dispute resolution is an address at which they can receive documents. Accordingly, I deem the landlords to be in receipt of a written forwarding address for the tenants as provided in the tenants' Application for Dispute Resolution sent to them by the tenants via registered mail on May 12, 2018.

As such, I find the tenant's Application to recover the security deposit is premature and the landlords may still return the tenants' security deposit in accordance with the provisions of section 38 of the *Act*. Given this finding, I do not find that the tenants are entitled to the recover the filing fee from the landlords for this application.

To clarify, this means that the landlords have 15 days from the deemed receipt date of this decision to return the tenants' security deposit. The deemed receipt date of this decision is five days from the date of this decision. The date of this decision is noted in the Conclusion section of this decision. Should the landlords fail to return the deposit within that timeline, the tenants will be at liberty to reapply for dispute resolution to claim double the amount of the security deposit pursuant to section 38(6) of the *Act*.

Conclusion

Accordingly, I dismiss the tenants' application with leave to reapply to request the return of double the security deposit, should the landlords fail to return the security deposit within 15 days of the deemed receipt date of this decision. The tenants bear the cost of the filing fee for this application.

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: July 10, 2018

Residential Tenancy Branch