



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNSD

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on June 30, 2018 (the “Application”). The Tenants applied for the return of double the security deposit and reimbursement for the filing fee.

The Tenants and Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Landlord confirmed he received the hearing package and Tenants’ evidence and raised no issues in this regard.

The Tenants testified that they did not receive evidence from the Landlord. The Landlord testified that he served his evidence on the Tenants and that it was in the same package as a cheque sent to the Tenants. The Tenants confirmed receiving the cheque but said the evidence was not included in the package. The Landlord did not provide evidence to support his position about service other than the registered mail receipt which does not address the contents of the package.

It is the party serving documents that must prove the documents were served in accordance with the *Residential Tenancy Act* (the “Act”) and Rules of Procedure (the “Rules”). Given the conflicting evidence of the parties, and lack of evidence to support the Landlord’s position, I am not satisfied the Landlord’s evidence was served on the Tenants in accordance with the *Act* and Rules.

I allowed the parties to make submissions about admission or exclusion of the evidence. I excluded the items the Tenants would not have been aware of including the

following: Building Fire Field Report; photos; emails and addendum to the tenancy agreement. I note that the Tenants took the position that there was no addendum to the tenancy agreement. I find that admission of this evidence would be unfair to the Tenants who testified that they did not receive this evidence. I admitted the remaining evidence as the Tenants were aware of it regardless of service.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all admissible documentary evidence and oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to the return of double the security deposit?
2. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

The parties agreed on the following. There was a written tenancy agreement between the Landlord and Tenants in relation to the rental unit. The tenancy started October 1, 2013 and was a month-to-month tenancy. The Tenants paid a \$1,000.00 security deposit.

The parties agreed there was a fire at the residence and this caused the rental unit to be uninhabitable. Both parties agreed the tenancy was frustrated and ended June 2, 2018.

Tenant L.J. testified that the Tenants provided their forwarding address in writing to the Landlord in a letter dated June 12, 2018. The Landlord acknowledged receiving the Tenants' forwarding address in writing on June 12, 2018.

The Landlord testified that he sent \$944.76 of the security deposit back to the Tenants July 11, 2018 by registered mail. Tenant L.J. acknowledged receiving this July 11, 2018.

Both parties agreed on the following. The Landlord did not have an outstanding monetary order against the Tenants at the end of the tenancy. The Tenants did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit. The Landlord did not apply to keep the security deposit.

The parties agreed no formal move-in inspection was done. Both parties agreed a move-out inspection was not done given the fire.

The Landlord testified that he was ready to return the security deposit at any time after the end of the tenancy. Tenant L.J. testified that the Landlord called June 25, 2018 saying the Tenants could come collect the security deposit June 27, 2018. She said the Landlord wanted them to sign a document that they did not agree to signing.

The Tenants agreed to the Landlord keeping \$3.68 towards an outstanding utility bill.

Analysis

Under sections 24 and 36 of the *Act*, parties can extinguish their rights to security deposits if they fail to follow the *Act* or *Residential Tenancy Regulation*.

The parties agreed no formal move-in inspection was done and no move-out inspection was done given the fire. I find the Tenants did not extinguish their rights in relation to the security deposit under sections 24 or 36 of the *Act* in the circumstances.

Section 38 of the *Act* sets out the obligations of landlords in relation to security deposits held at the end of a tenancy. Section 38(1) requires landlords to return the deposit or claim against it within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing. There are exceptions to this outlined in sections 38(2) to 38(4) of the *Act*.

Here, there is no issue that the tenancy ended June 2, 2018. Further, there is no issue that the Landlord received the Tenants' forwarding address in writing on June 12, 2018. Therefore, the relevant date for section 38(1) of the *Act* is June 12, 2018. The Landlord had 15 days from June 12, 2018 to repay the deposit or claim against it.

There is no issue that the Landlord did not repay the deposit or file an application for dispute resolution claiming against it within 15 days of June 12, 2018.

The parties agreed the Landlord sent a portion of the security deposit back July 11, 2018, after the Tenants filed the Application. I note that the Landlord testified that he was ready to send the security deposit back at any time. Further, the parties testified about a conversation where the Landlord said the Tenants could pick the security deposit up June 27, 2018. However, according to both parties, the Landlord did not

provide the security deposit on that date. Whether the Tenants would sign a document or not is not relevant in my view. Section 38 of the *Act* required the Landlord to either repay the deposit or file an application for dispute resolution claiming against it by June 27, 2018. The Landlord did neither.

I find the Landlord failed to comply with section 38(1) of the *Act* by failing to repay the deposit or claim against it by June 27, 2018. Pursuant to section 38(6) of the *Act*, the Landlord cannot claim against the deposit and must pay the Tenants double the amount of the deposit.

I note that none of the exceptions in sections 38(2) to 38(4) of the *Act* apply.

I do note that, at the hearing, the Tenants agreed the Landlord could keep \$3.68 of the security deposit. This amount is subtracted from the \$1,000.00 security deposit. The remaining \$996.32 of the security deposit is doubled given the Landlord failed to comply with section 38(1) of the *Act*. The Landlord therefore had to return \$1,992.64 to the Tenants. The Landlord did return \$944.76 of the deposit after the 15-day deadline. The Tenants advised that they had not cashed this cheque. In my view, the Tenants should have and I deduct the \$944.76 from the amount owed. Therefore, the Landlord is required to return a further \$1,047.88 to the Tenants. I note that there is no interest owed on the deposit as the amount of interest owed has been 0% since 2009.

As the Tenants were successful in this application, I grant them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenants are entitled to a Monetary Order in the amount of \$1,147.88.

Conclusion

The Tenants are entitled to a Monetary Order in the amount of \$1,147.88 and I grant the Tenants a Monetary Order in this amount. This Order must be served on the Landlord as soon as possible. If the Landlord fails to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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 *Act*.

Dated: October 19, 2018

Residential Tenancy Branch