



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* ("Act") for:

- authorization to obtain a return of double the amount of their security and pet damage deposits (collectively "deposits"), pursuant to section 38; and
- authorization to recover the filing fee for their application, pursuant to section 72.

"Tenant JC" did not attend this hearing, which lasted approximately 62 minutes. The landlord, the landlord's agent, and tenant BA ("tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord's agent confirmed that he had permission to speak on behalf of the landlord at this hearing. The landlord did not testify at this hearing. The tenant confirmed that he had permission to speak on behalf of tenant JC at this hearing.

The landlord's agent confirmed receipt of the tenants' application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application and both tenants were duly served with the landlord's written evidence package.

Issues to be Decided

Are the tenants entitled to a return of double their deposits?

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

Background and Evidence

Both parties agreed to the following facts. This tenancy began on August 1, 2016. Monthly rent in the amount of \$4,355.00 was payable on the first day of each month. A security deposit of \$2,100.00 and pet damage deposit of \$2,100.00 were paid by the tenants. Both parties signed a written tenancy agreement and a copy was provided for this hearing. Move-in and move-out condition inspection reports were completed for this tenancy. A written forwarding address was provided by the tenants to the landlord by way of email on March 25, 2018. A copy of this email was provided for this hearing. The tenants provided written permission for the landlord to retain \$1,970.00 from both deposits, for unpaid rent. The landlord did not file an application for dispute resolution to keep any part of the deposits.

The tenant said that the tenancy ended on March 24, 2018, while the landlord's agent said that it was March 25, 2018. The landlord's agent testified that the landlord mailed a cheque for \$2,230.00, that was not cashed, to the tenants at their forwarding address on April 8, 2018 by way of regular mail. The tenant claimed that he never received this cheque.

The tenants seek a return of double the amount of their deposits of \$4,200.00, totalling \$8,400.00, minus the \$1,970.00 for unpaid rent, for a total of \$6,430.00. The tenants also seek to recover the \$100.00 filing fee paid for this application.

Analysis

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the submissions and arguments are reproduced here. The principal aspects of the tenants' claims and my findings are set out below.

Section 38 of the *Act* requires the landlord to either return the tenants' deposits or file for dispute resolution for authorization to retain the deposits, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposits. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the deposits to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings, on a balance of probabilities. The tenants gave the landlord written permission to keep \$1,970.00 from their deposits. The landlord did not file an application to keep the deposits.

I find that the tenants provided their written forwarding address to the landlord on March 25, 2018 by way of email. Although email is not a permitted method under section 88 of the *Act*, the landlord's agent acknowledged receipt and the landlord used this address to mail the cheque for the return of \$2,230.00 to the tenants.

I accept that the landlord returned the correct amount of the deposits minus the agreed unpaid rent amount on April 8, 2018, which is within 15 days of March 25, 2018, which is the later date when the tenants provided their forwarding address to the landlord. Although the tenants did not receive or cash the cheque, I accept the landlord agent's affirmed testimony that the cheque was mailed on that date. Although section 90 of the *Act* provides deemed receipt of mail five days after mailing, section 38(1)(c) states that the landlord must "repay" the deposits, not that the deposits cheque must be "received" by the tenants on that date.

Therefore, I find that the tenants are not entitled to the return of double the value of their security deposit. Over the period of this tenancy, no interest is payable on the landlord's retention of the tenants' security deposit. In accordance with section 38(6)(b) of the *Act*, I find that the tenants are entitled to a return of the original amount of their deposits of \$4,200.00, minus the \$1,970.00 for unpaid rent, from the landlord. I find that the tenants are entitled to \$2,230.00.

The landlord's cheque has not been received or cashed by the tenants. If the tenants receive the cheque for \$2,230.00 after this hearing, they are not entitled to double recovery from that cheque and the monetary order that results from this decision. The tenants are only entitled to \$2,230.00 total.

As the tenants were only partially successful in this application, I find that they are not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of \$2,230.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the

landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of 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: October 24, 2018

Residential Tenancy Branch