



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: MNSD FF

Landlord: MND MNDC MNSD

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on September 18, 2018.

Both parties attended the hearing and provided testimony. The Landlord stated that he did not serve the Tenants with his application, Notice of Hearing, or his evidence. As discussed during the hearing, the Landlord's application is dismissed, with leave to reapply, as he failed to serve his application and evidence in accordance with the Rules of Procedure. Although the Landlord is granted leave to reapply for monetary compensation for damage or loss, I find it important to note that this is not an extension of any statutory requirements with respect to the return of the security deposit.

The Tenant stated that she served the Landlord with her application and Notice of Hearing by registered mail. The Landlord acknowledged receipt of this package but did not know which day. I find the Tenant has sufficiently served the Landlord with her Notice of Hearing and application package. The Tenant stated that she did not serve the Landlord with her evidence and was unaware that she needed to. As discussed during the hearing, Residential Tenancy Branch Rule of Procedure 3.14 requires that evidence to be relied upon at a hearing must be received by the Residential Tenancy Branch and the respondent not less than 14 days before the hearing. Since the Tenants' evidence was never served to the Landlord, I will not consider it in this hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Tenants entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?

Background and Evidence

The parties confirmed that the Tenant paid a security deposit of \$775.00 and a pet deposit of \$300.00. The Landlord still holds these amounts. The parties also confirmed that the Tenants moved most of their things out on January 15, 2018, but that they did not return the keys until January 30, 2018, as they had paid rent up until the end of January 2018.

The Landlord stated that a move-out inspection was done when the Tenant returned the keys. The Tenant stated that she returned the keys on January 30, 2018, but that the Landlord never did a proper move-out inspection/report and she was never given a copy of any report, if it exists.

The Tenant stated that she sent her forwarding address in writing to the Landlord by mail on February 1, 2018. The Landlord acknowledged getting this from the Tenants, but was not sure what day.

The Tenant stated that she did not authorize the Landlord to retain any of the deposit.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

I note the Tenant attended the rental unit on January 30, 2018, in an attempt to do a walk through inspection with the Landlord and to return the keys. I find this reflects the end of the tenancy, as this is when rent was paid until and when the keys were

returned. Although the Landlord stated he did a walk through inspection at the end of the tenancy, which the Tenant stated was not a proper walk-through, I am mindful that the Tenant's undisputed evidence is that there was never a condition inspection report completed or provided to the Tenants.

As a result, I find the Landlord extinguished his right to claim against the security deposit or pet damage deposit by failing to properly perform, complete, and deliver a copy of any written condition inspection report to the Tenants. This extinguishment is explained in section 24(2) as follows:

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 23 (3) [2 opportunities for inspection]

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

[Reproduced as written.]

Based on the above, I find the Landlord extinguished his right to file against the security deposit, and he was required to return the security deposit and pet deposit, in full, within 15 days of receiving the Tenants' forwarding address in writing, or the end of the tenancy, whichever is later.

In this case, the Landlord was not sure when he received the Tenant's forwarding address in writing but did recall getting it in the mail. Pursuant to section 88 and 90 of the Act, I find the Landlord is deemed served with the Tenants' forwarding address in writing on February 6, 2018, the fifth day after it was mailed.

Pursuant to section 38(1) of the Act, the Landlord had 15 days from (deemed) receipt of the forwarding address in writing (until February 21, 2018) to repay the security deposit (in full) to the Tenants. However, the Landlord did not do so and I find the Landlord breached section 38(1) of the Act.

Accordingly, as per section 38(6)(b) of the Act, I find the Tenants are entitled to recover double the amount of the security and pet deposit (\$1,075.00 x 2). Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenants were successful in this hearing, I also order the Landlord to repay the \$100.00 fee the Tenants paid to make the application for dispute resolution.

In summary, I issued the Tenants a monetary order for \$2,250.00 based on the Landlord's failure to deal with the security deposit in accordance with section 38 of the *Act*.

Conclusion

I grant the Tenants a monetary order in the amount of **\$2,250.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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 *Residential Tenancy Act*.

Dated: September 19, 2018

Residential Tenancy Branch