



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

On June 15, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) requesting the return of their security deposit, to recover the cost of the filing fee for this application and to recover the cost of the filing fee for their October 2, 2017 application. The matter was set for a conference call.

Both the Tenants and Landlords attended the hearing and were each affirmed to be truthful in their testimony. The Tenants and Landlords were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Tenant and the Landlords testified that they received each others documentary evidence that I have before me.

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

Issues to be Decided

- Has there been a breach of Section 38 of the *Act* by the Landlords?
- Are the Tenants entitled to the return of their security deposit?
- Are the Tenants entitled to recover the cost of the filing fee for their October 2, 2017 application?
- Are the Tenants entitled to recover the cost of the filing fee for this application?

Background and Evidence

The parties agreed that the tenancy began on September 1, 2015, as a one-year fixed term tenancy. Rent in the amount of \$1025.00 was to be paid by the first day of each

month, and the Tenant paid the Landlords a \$512.50 security deposit (the deposit). It was also agreed that the Tenant ended their tenancy in accordance with the Act and moved out of the rental unit on June 30, 2017.

The Tenants testified that they were present for the move out inspection, conducted on June 30, 2017. However, the inspection had just been a walk through with no written document. The Landlords agreed that no written move-in or move-out inspection report had been created for this tenancy. The Tenants testified that they had given the Landlords verbal permission to keep \$75.00 of the deposit and are looking to recover \$437.50 from their deposit.

The Tenants also testified that they provided the Landlords with their forwarding address in writing on August 9, 2017, via Canada Post Registered mail. The Tenants provided the tracking number into documentary evidence.

The Landlords testified that they had received the Tenants' forwarding address; however, they did not return the deposit to the Tenants due to damage to the rental unit. The Landlords testified that they did not have a written agreement with the Tenant to retain the full deposit, nor have they filed an Application for Dispute Resolution claiming against the deposit.

Analysis

I have carefully reviewed the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 38(1) of the *Act* gives the landlord 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposit or repay the security deposit to the tenant.

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d)make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that this tenancy ended on June 30, 2017, the date the Tenants moved out of the rental unit and that they mailed their forwarding address to the Landlords on August 9, 2015. Pursuant to section 90 of the *Act*, I find that the Landlords would have received the Tenants forwarding address five days later, on August 14, 2018. Accordingly, Landlords had until August 30, 2018, to comply with section 38(1) of the *Act* by either repaying the deposit in full to the Tenants or submitting an Application for Dispute resolution to claim against the deposit. The Landlords, in this case, did neither.

At no time does a landlord have the right to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. If the landlord and the tenant are unable to agree to the repayment of the security deposit or that deductions be made, the landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later. It is not enough that the landlord thinks they are entitled to keep even a small portion of the deposit, based on unproven claims.

I find that the Landlords breached section 38 (1) of the *Act* by not returning the Tenants' security deposit or filing a claim against the deposit within the statutory timeline.

Section 38 (6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return or apply to retain the deposit within the 15 days, the landlord must pay the tenant double the security deposit.

Return of security deposit and pet damage deposit

- 38 (6)** If a landlord does not comply with subsection (1), the landlord
- (a)may not make a claim against the security deposit or any pet damage deposit, and
 - (b)must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Therefore, I find that pursuant to section 38(6) of the *Act* the Tenants have successfully proven their entitlement to the return of double the security deposit. I grant the Tenants a monetary order in the amount of \$950.00, consisting of \$1025.00 for the return of double the security deposit, less the agreed upon \$75.00 in rent.

As the Tenants have been successful in this application, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application.

I decline to award the return of the filing fee for the Tenants' October 2, 2017 application.

Conclusion

I find that the Landlords have breached section 38 of the *Act*, as they failed to repay or make a claim against the security deposit as required by the *Act*.

I find for the Tenants pursuant to sections 38 and 72 of the *Act*. I grant the Tenants a **Monetary Order** in the amount of **\$1,050.00**. The Tenants are provided with this Order in the above terms, and the Landlords must be served with this Order as soon as possible. Should the Landlords 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.

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 21, 2018

Residential Tenancy Branch