



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenants under the *Residential Tenancy Act* (the “Act”) for the return of double the security deposit and for the recovery of the filing fee paid for this application.

One of the Tenants and both Landlords were present for the teleconference hearing. The parties confirmed that the Notice of Dispute Resolution Proceeding package and copies of each party’s evidence was exchanged as required.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

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

Are the Tenants entitled to the return of double their security and pet damage deposits?

Should the Tenants be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began in approximately 2010 and ended on January 31, 2018. Monthly rent during the tenancy was \$1,550.00, which was reduced to \$1,500.00 by the end of the tenancy.

A security deposit of \$975.00 was paid at the outset of the tenancy. The Tenant stated that \$775.00 was a security deposit and \$200.00 was paid for a pet damage deposit.

The Tenant provided testimony that she gave the Landlords their forwarding address by email on January 3, 2018. When they did not receive the security deposit back, the Tenant sent another email on February 4, 2018 to confirm their forwarding address. The Landlords responded to this email to confirm they now had the forwarding address.

The Tenant testified that she participated in the move-out Condition Inspection on January 31, 2018. She stated that during the inspection, the Landlords filled out the report and indicated that as they already had the forwarding address, they would put this address onto the report. The Condition Inspection Report was provided in evidence and the section for the Tenants' forwarding address was not filled out.

On February 19, 2018, the Tenant stated that she received an e-transfer from the Landlords in the amount of \$900.00. As this was not the full amount, and they had not agreed to any deductions from the security deposit, the Tenant emailed the Landlords to advise them that this was not enough.

The Tenant stated that at this time she was very busy with work and unable to accept the e-transfer funds right away. Later that day, the Tenant stated she received the additional \$75.00 through e-transfer.

However, before being able to accept the e-transfers into her bank account, the Tenant testified that the e-transfer was cancelled by the Landlords the following day. The Tenant confirmed that she did not reject the e-transfer funds and was planning on depositing the funds as soon as she could. Instead, as she had only received \$900.00, she thought the Landlords had withheld \$75.00 without their permission.

The Tenant testified that the Landlords re-sent the funds by e-transfer on February 26, 2018 and the full deposit amount of \$975.00 was accepted by the Tenants. Therefore,

the Tenants are claiming for the return of an additional \$975.00 to double the security deposit, as the funds were not returned within the 15 days allowable under the *Act*.

The Landlords provided testimony that the Tenant participated in the move-out inspection on January 31, 2018 and that they did not have their forwarding address at that time. They stated that they did not fill out the Condition Inspection Report for the Tenants and did not offer to put the forwarding address information onto the form.

The Landlords stated that they received the Tenants' forwarding address on February 4, 2018 and responded by email to confirm that it had been received. Although they saw the chain of emails later that included the Tenants' forwarding address as sent on January 3, 2018, they stated that they did not receive that email at the time and February 4, 2018 was their first receipt of the forwarding address.

On February 19, 2018 the Landlord confirmed that they sent two e-transfers to the Tenants in the amounts of \$900.00 and \$75.00. They testified that the funds were in separate accounts but were sent at the same time. After sending the funds, the Landlords received an email from one of the Tenants stating that the funds were not enough and that the Landlords were required to send double, for a total amount of \$1,850.00.

The Landlords stated that they took this as the Tenants' rejection of the amount they had sent, so they cancelled the e-transfers on February 20, 2018. The bank statements outlining the e-transfers and cancellation of the funds sent were submitted into evidence by the Landlords.

The Landlords also submitted the email from the Tenant into evidence that was sent after the e-transfer funds were initially sent on February 19, 2018. In the email, the Tenant states that she did not agree to any deductions from the security deposit and that she will accept \$1,850.00; \$1,550.00 for the return of double the security deposit, \$200.00 for the return of the pet damage deposit and \$100.00 for the filing fee for the Application for Dispute Resolution.

After receiving the email from the Tenant stating that she will accept a return of \$1,850.00, the Landlords cancelled the e-transfer funds on February 20, 2018. The Landlords confirmed that the security deposit in the amount of \$975.00 was sent again on February 26, 2018 and accepted by the Tenants. Through email communication with

the Tenant, the Landlords understood that the Tenant had plans to cancel the Dispute Resolution Process upon receipt of the \$975.00 security deposit.

Analysis

Based on the testimony and evidence of both parties, and on a balance of probabilities, I find as follows:

Although service through email is not an acceptable method of service under the *Act*, as the Landlords confirmed receipt of the Tenants' forwarding address on February 4, 2018, I find that the forwarding address was accepted on this date.

I accept the evidence before me that the Tenants sent their address previously, on January 3, 2018. However, as the Landlords did not respond and email is not an acceptable method of service, I cannot confirm that the Landlords were in receipt of the forwarding address on this date.

Instead, as the parties had established email communication, and the Landlord responded with acceptance of the forwarding address on February 4, 2018, I determine this date as the date of receipt of the forwarding address.

In accordance with Section 38(1), a landlord has 15 days from the later of the end of tenancy or the date the forwarding address is provided to either return the security deposit or file a claim against it.

As the tenancy ended on January 31, 2018 and the forwarding address was provided on February 4, 2018, I find that the Landlords had 15 days from February 4, 2018 to return the security deposit and pet damage deposit or file a claim against them.

When the Landlords sent the security and pet deposit amounts by e-transfer on February 19, 2018, this was within the 15 days allowable under the *Act*. However, as the e-transfer funds were cancelled the following day, and the return of the deposit not completed until February 26, 2018, the main determination is whether the deposits were returned within the 15 days provided by the *Act*.

If the deposits were not returned within the 15 days allowable, then Section 38(6) applies, and the Tenants are entitled to the return of double the deposits.

The Landlords claimed that the Tenant rejected the funds they sent on February 19, 2018, while the Tenant claimed she did not reject them, but instead had not had a chance to accept the funds before they were cancelled.

The Landlord stated that the two e-transfers of \$900.00 and \$75.00 were sent at the same time, while the Tenant stated she only received the \$900.00 transfer, which led to her email to the Landlords the same day to request the remainder of the deposit amounts.

The email from the Tenant, dated February 19, 2018, provided information from the Residential Tenancy Branch on the security deposit doubling provision, confirmed that the Tenants did not agree to any deductions from the deposits, and stated the following, "In light of the information above, I will accept \$1850".

Based on this email, I find that it was reasonable for the Landlords to believe that the Tenant was not accepting the e-transfer funds, as the funds had not been accepted, and the email stated that the Tenants were requesting an amount of \$1,850.00, not just an additional \$75.00.

As the email was sent on February 19, 2018, the 15th day after receipt of the Tenants' forwarding address, I also find that the Tenant moved to requesting double the deposit before the time period of 15 days had passed.

Although the parties were not in agreement as to whether the two e-transfers of \$900.00 and \$75.00 were sent at the same time, the evidence shows two e-transfers of \$900.00 and \$75.00 sent to the Tenants on the same day. If the Tenants only received the \$900.00 e-transfer on the 15th day, this does not automatically entitle them to double the amount before the 15th day is over.

As the money for the return of the deposits, in an amount totalling \$975.00 was sent to the Tenants on February 19, 2018 and was cancelled due to an email from the Tenant stating that she was owed \$1,850.00, I find that the Landlords took reasonable steps to return the deposits within the timeframe outlined in Section 38(1) of the *Act*.

Therefore, I find that the Tenants are not entitled to double the return of their security deposit and pet damage deposit and I dismiss their application.

As the Tenants were not successful in their application, I also decline to award the recovery of the filing fee paid for the Application for Dispute Resolution.

Conclusion

The Tenants' application for the return of double the security deposit and pet damage deposit 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: September 27, 2018

Residential Tenancy Branch