



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FFT

Introduction

On March 20, 2018, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for the Landlord to return of all or part of the pet damage deposit or security deposit, for money owed or compensation for damage or loss; and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to 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

- Are the Tenants entitled to the return of the security deposit?
- Are the tenants entitled to money owed or compensation for damage or loss?
- Are the Tenants entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy began on December 1, 2017, as a fixed term tenancy that could continue until March 1 2018. Rent in the amount of \$2,000.00 was due by the first day of each month. The Tenants paid the Landlord a security deposit of \$1,000.00.

The Tenants testified that the Landlords did not return the security deposit after the Tenants moved out of the rental unit on February 15, 2018.

The Tenants testified that they believe that their realtor provided the Landlord with their forwarding address in writing on February 15, 2018. The Tenants did not have a copy of any forwarding address provided.

The Landlord testified that he never received the Tenants' forwarding address in writing. The Landlord testified that the Tenants left the rental unit damaged and unclean.

Section 38 (1) of the Act states that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must repay any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations, or make an application for dispute resolution claiming against the security deposit.

Analysis

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

There is insufficient evidence from the Tenants to prove that they provided the Landlord with their forwarding address in writing. The Landlord has not had an opportunity to return or make a claim against the security deposit.

I find that the Landlord now knows the Tenants' forwarding address and that the Tenants are seeking the return of the \$1,000.00 security deposit.

I find that the Landlord has 15 days from the date of this Decision to repay the security deposit to the Tenants or make application for dispute resolution to make claim against the deposit. If the Landlord does not return or make claim against the deposit within 15 days, the Tenants may reapply for dispute resolution and seek double the deposit.

The Tenant's application for the return of the security deposit is dismissed with leave to reapply.

The Tenants monetary claim in the amount of \$1,000.00 for money owed or compensation for damage or loss is dismissed. The Tenants based this claim on the Landlord's failure to return the deposit; however, I find that the Tenants did not provide sufficient evidence that they provided their forwarding address to the Landlord. In

addition, I find that the costs for preparing for the hearing, including time lost from work are not recoverable against the Landlord.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenants' application for the return of the deposit was premature, I decline an award to recover the filing fee.

Conclusion

The Tenants' application was premature and is dismissed with leave to reapply. The Tenants must wait 15 days from the date of this Decision before considering whether to reapply for dispute resolution for the return of the security deposit.

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 15, 2018

Residential Tenancy Branch