



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNSD

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on June 21, 2018 (the “Application”). The Tenants applied for the return of the security deposit and reimbursement for the filing fee.

The Tenant appeared at the hearing. The Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Landlord confirmed he received the hearing package and Tenants’ evidence.

The Tenant advised that she did not receive the Landlord’s evidence. The Landlord confirmed he did not serve his evidence on the Tenants. I heard from the parties on whether the evidence should be admitted or excluded. I excluded the evidence given it was not served in accordance with the Rules of Procedure.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all admissible documentary evidence and oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to the return of the security deposit?
2. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement had been submitted as evidence. It is between the Landlord and Tenant in relation to the rental unit. The tenancy started August 1, 2016 and was for a fixed term ending October 31, 2016. The parties agreed the tenancy was extended via text between the parties. The Tenant paid a security deposit of \$750.00. The agreement is signed by the Landlord and Tenant. The parties agreed it was understood that both Tenants were tenants under the agreement.

The parties agreed the Tenants vacated the rental unit May 1, 2018. The Landlord confirmed he still holds the entire security deposit.

Both parties agreed the Tenants provided their forwarding address in writing to the Landlord via text message on May 31, 2018. Both parties agreed text message was a common form of communication between the parties during the tenancy.

The parties agreed on the following. The Landlord did not have an outstanding monetary order against the Tenants at the end of the tenancy. The Tenants did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit. The Landlord did not apply to keep the deposit.

Both parties agreed no move-in inspection was done.

The Tenant testified that no move-out inspection was done. The Landlord testified that his nephew did a move-out inspection. The Landlord said the Tenants were not offered two opportunities to do a move-out inspection.

Analysis

Section 38 of the *Residential Tenancy Act* (the “*Act*”) sets out the obligations of landlords in relation to security deposits held at the end of a tenancy.

Section 38(1) requires landlords to return the security deposit or claim against it within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant’s forwarding address in writing. There are exceptions to this outlined in sections 38(2) to 38(4) of the *Act*. Further, landlords cannot claim against the security deposit for damage to the unit under section 38(1) of the *Act* if they have extinguished their right to claim against the security deposit under either section 24 or 36 of the *Act*.

There is no issue that no move-in inspection was done or that the Tenants were not offered two opportunities to do a move-out inspection. Therefore, the Tenants did not extinguish their rights in relation to the security deposit under sections 24 or 36 of the *Act*. Further, the Landlord did extinguish his right to claim against the security deposit for damage to the rental unit under sections 24 and 36 of the *Act*.

There is no issue that the Tenants provided their forwarding address on May 31, 2018, after the end of the tenancy. Although this was provided via text message, I find this sufficient given this was a common form of communication between the parties and given the Landlord acknowledged receiving the text message. Therefore, May 31, 2018 is the relevant date for the purposes of section 38(1) of the *Act*. The Landlord had 15 days from May 31, 2018 to repay the deposit or claim against the deposit for something other than damage to the unit.

There is no issue that the Landlord did not repay the security deposit or claim against it for something other than damage to the unit. Therefore, the Landlord failed to comply with section 38(1) of the *Act*.

There is no issue that the exceptions outlined in sections 38(2) to 38(4) of the *Act* do not apply in this case.

Given the Landlord failed to comply with section 38(1) of the *Act*, and that none of the exceptions apply, the Landlord is not permitted to claim against the security deposit and would have had to return double the security deposit to the Tenants pursuant to section 38(6) of the *Act*. However, the Tenant waived this right during the hearing. Therefore, the Landlord must only return the original amount of \$750.00 to the Tenants. I note that there is no interest owed on the deposit as the amount of interest owed has been 0% since 2009.

As the Tenants were successful in this application, I grant them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenants are entitled to a Monetary Order in the amount of \$850.00.

Conclusion

The Tenants are entitled to a Monetary Order in the amount of \$850.00 and I grant the Tenants a Monetary Order in this amount. This Order must be served on the Landlord as soon as possible. If the Landlord fails to comply with this Order, the 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 *Act*.

Dated: November 07, 2018

Residential Tenancy Branch