



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "*Act*"). The Tenants applied for a monetary order for money owed or compensation for damage or loss, for the return of their security deposit, and to recover their filing fee. The Matter was set for conference call.

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

I have reviewed all evidence and testimony 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 Landlord?
- Are the Tenants entitled to the return of their security deposit?
- Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act*?
- Are the Tenants entitled to recover the filing fee for this application?

Background and Evidence

Both parties agreed that the tenancy began on July 1, 2015. Rent in the amount of \$1,250.00 was to be paid by the first day of each month, and that the Tenants paid the

Landlords a \$600.00 security deposit (the deposit). It was also agreed that the Tenants moved out of the rental unit on June 30, 2018.

The Parties also agreed that no formal move-in or move-out inspection had been completed for this tenancy, in accordance with the *Act*. The Landlord testified that she had taken pictures of the rental unit before the Tenants move in and that she had done this instead of a move-in inspection. The Tenants testified that they requested a move out inspection, and that the Landlord had conducted a walkthrough of the rental unit with them but that no written inspection report was created.

The Tenants testified that they provided the Landlord with their forwarding address, in a written letter, on July 30, 2018, and that at no time had the Landlords been given written or verbal permission to keep any part of their security deposit. The Tenants provided a copy of the letter into documentary evidence.

The Landlord testified that she did not return the deposit to the Tenants due to damage to the rental unit. The Landlord testified that she had informed the Tenants of her reasons why she was keeping the deposit, in a text message on August 3, 2018. The Landlord submitted a copy of the text message conversation between herself and the Tenants into documentary evidence.

The Landlord submitted a written letter dated November 26, 2018, detailing her costs for cleaning, painting, and purchasing a new stove, into documentary evidence. The Landlord also testified that as of the date of this hearing she had not filed an Application for Dispute Resolution claiming against the deposit.

Analysis

Based on the testimony, the documentary evidence before me, 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 accept the agreed upon testimony of these parties, and find that this tenancy ended on June 30, 2018, the date the Tenants moved out of the rental unit. I also find that the Tenants provided their forward address to the Landlord on July 30, 2018. Accordingly, the Landlord had until August 15, 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 Landlord 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 that they are entitled to the return of double the security deposit. I find for the Tenants, in the amount of \$1,200.0, granting a monetary order for the return of double the security deposit.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants have been successful in their application, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for his application.

Conclusion

I find that the Landlord has breached section 38 of the *Act*, as she 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 **\$1,300.00**. The Tenants are provided with this Order in the above terms, and the Landlord must be served with this Order as soon as possible. Should the Landlord 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: December 20, 2018

Residential Tenancy Branch