Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This is an application by the tenants filed under the Residential Tenancy Act (the "Act") for a monetary order for return of double the security deposit (the "Deposit"), and to recover the filing fee for the claim.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

Are the tenants entitled to a monetary order for return of double the Deposit?

Background and Evidence

The tenancy began on November 1, 2017. Rent in the amount of $1,350.00 was payable on the first of each month. A security deposit of $675.00 was paid by the tenants. The tenancy ended on April 29, 2018.

The tenants testified that they vacated the premises on April 29, 2018. The tenants stated that they provided the landlord with a written notice of the forwarding address on April 29, 2018, as it was written on the move out inspection. The tenants stated they did not authorize the landlord to retain any amount from the Deposit and there were no orders made that authorized the landlord to retain any amount from the Deposit.

The landlord testified that they did receive the tenants forwarding address on the move out inspection. The landlord confirmed they did not return the security deposit or make an application claiming against the Deposit.

Analysis

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

Return of security deposit and pet damage deposit is defined in Part 2 of the Act.

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.

…

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(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.

In this case, the landlord confirmed they did not return the Deposit or apply for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address, which was given on April 29, 2018.

I accept the undisputed testimony of the tenants that they did not agree in writing that the landlord may retain any amount from the security deposit or pet deposit.

I find the landlord has breached 38(1) of the Act.

The security deposit is held in trust for the tenants by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator. Here the landlord did not have any authority under the Act to keep any portion of the Deposit. Therefore, I find that the landlord was not entitled to retain any portion of the Deposit).

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Therefore, I must order, pursuant to section 38 of the Act, that the landlord pay the tenants the sum of **$1,450.00**, comprised of double the security deposit ($675.00) on the original amounts held and to recover the $100.00 fee for filing this Application.

The tenants are given a formal monetary order pursuant to 67 of the Act, in the above terms and the landlord must be served with a copy of this order as soon as possible.

Should the landlord fail 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.

Conclusion

The tenants' application for return of double the Deposit is granted. The tenants are granted a monetary order in the above noted amount.

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 21, 2018

Residential Tenancy Branch