



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing was scheduled in response to the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenants and the landlord's agent (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed she was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. The tenants acknowledged they did not provide all evidence uploaded to the Residential Tenancy Branch website, to the landlord. As such I have not relied on this evidence to form any part of my decision. As neither party raised any issues regarding service of the application or the remaining evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the tenants authorized to obtain a return of all or a portion of the security deposit?

Are the tenants authorized to recover the filing fee for this application from the landlord?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy for this fully furnished unit began on September 1, 2016 on a fixed term until August 31, 2017. Rent in the amount of \$3,862.50 was payable on the first of each month. The tenants remitted a security deposit in the amount of \$1,800.00 at the start of the tenancy. The tenants vacated the unit September 1, 2017 at which time they provided their forwarding address on the move-out condition inspection report.

After filing their application for the return of their security deposit, the tenants each received a cheque on September 10, 2017, in the amount of \$467.64, from the landlord. The tenants testified that they did not authorize the landlord to retain any portion of their security deposit and seek to recover the outstanding \$864.72.

The landlord testified that at the end of the tenancy the tenants agreed in writing that the landlord could retain a portion of the security deposit to pay for cleaning and the replacement of some linens.

Analysis

Section 38 of the *Act* establishes that a landlord has fifteen days from the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an arbitration application claiming against the deposit, or return the deposit. The tenant may waive their right to the return of the security deposit through written authorization to the landlord.

The landlord received the forwarding address on September 1, 2017 and returned a portion of the deposit on September 10, 2017, which is within the fifteen days allowable under the *Act*. I find the remaining portion of the security deposit in the amount of \$864.72 was waived by the tenants through written authorization on the move-out condition inspection report. Accordingly, I dismiss the tenants' application without leave to reapply.

As the tenants were not successful in this application, I find that the tenants are not entitled to recover the \$100.00 filing fee.

Conclusion

The tenants' application 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: January 11, 2019

Residential Tenancy Branch