



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution, filed on August 28, 2018, wherein the Tenants sought return of their security deposit and recovery of the filing fee.

The hearing was scheduled for 1:30 p.m. on this day. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The parties confirmed their email addresses during the hearing. The parties further confirmed their understanding that this Decision would be emailed to them and that any applicable Orders would be emailed to the appropriate party.

Issues to be Decided

1. Are the Tenants entitled to return of their security deposit?
2. Should the Tenants recover their filing fee?

Background and Evidence

The Tenant, S.C., testified as follows. She confirmed that this tenancy began February 1, 2018. Monthly rent was payable in the amount of \$1,200.00 and the Tenants paid a \$600.00 security deposit.

The Tenants provided their forwarding address to the Landlords on August 4, 2018 by email; a copy of which was provided in evidence. S.C. further testified that in response to the email the Landlords provided a list of items to which they believed the Tenants should contribute. S.C. confirmed that the Tenants did not agree to any deductions to their security deposit.

S.C. further confirmed that to her knowledge the Landlords failed to apply for Dispute Resolution to retain their security deposit.

The Landlord, K.S., also testified. He confirmed that they did not make an application for dispute resolution to retain the Tenants' security deposit. He also stated that he intended to make such an application as the damage to the rental unit exceeded \$2,500.00.

Analysis

The Tenants apply for return of their security deposit pursuant to section 38 of the *Residential Tenancy Act* which provides as follows:

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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) [*tenant fails to participate in start of tenancy inspection*] or 36 (1) [*tenant fails to participate in end of tenancy inspection*].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(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.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].

(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.

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

I accept the Tenants' evidence that they did not agree to the Landlords retaining any portion of their security deposit.

I find that the Landlords received the Tenants' forwarding address in writing on August 4, 2018.

The Landlords failed to apply for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenants, to retain a portion of the security deposit, as required under section 38(1) of the *Act*.

The security deposit is held in trust for the Tenants by the Landlord. The Landlords may only keep all or a portion of the security deposit through the authority of the *Act*, such as the written agreement of the Tenants an Order from an Arbitrator. If the Landlords believe they are entitled

to monetary compensation from the Tenants, they must either obtain the Tenant's consent to such deductions, or obtain an Order from an Arbitrator authorizing them to retain a portion of the Tenants' security deposit. Here the Landlords did not have any authority under the *Act* to keep any portion of the security deposit.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlords pay the Tenants the sum of **\$1,300.00**, comprised of double the security deposit (2 x \$600.00) and the \$100.00 fee for filing this Application.

The Landlords indicated they believe they are entitled to monetary compensation from

Conclusion

The Tenants are entitled to return of double their security deposit pursuant to sections 38(1) and (6) of the *Act*.

Having been successful in their application, the Tenants are also entitled to recover the filing fee for a total of \$1,300.00 in compensation.

In furtherance of this, the Tenants are given a formal Monetary Order in the amount of **\$1,300.00**. The Tenants must serve a copy of this Order on the Landlords 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.

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 03, 2019

Residential Tenancy Branch