Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

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

Landlord S.H. (the landlord) and Tenant T.O. (the tenant) attended the hearing and were given a full opportunity to be heard, to present their sworn testimony and to make submissions. The tenant had an assistant to assist with submissions.

While I have turned my mind to all the documentary evidence, including witness statements and the testimony of the parties, only the relevant portions of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application for Dispute Resolution (the Application) and the tenants' evidence which were served by way of registered mail. In accordance with sections 88 and 89 of the Act, I find that the landlord is duly served with the Application and evidence.

The tenant acknowledged receipt of the landlord's evidence which was sent by mail. I find that the tenant is duly served with landlords' evidence pursuant to section 88 of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a monetary award for the return of all or a portion of their security deposit?

Are the tenants entitled to recover the filing fee for this application from the landlords?

Background and Evidence

Written evidence was provided that this tenancy began on March 15, 2018, with a monthly rent in the amount of $1,950.00, due on the first day of each month. The landlord and tenant agreed that the landlord currently retains a combined security and pet damage deposit in the amount of $1,600.00.

The tenant submitted that they moved out of the rental unit and that the landlord did not return their security or pet damage deposit after the tenancy ended. The tenant's assistant stated that the landlord was only provided with the tenant's forwarding address when they were served with the Application for this hearing.

The landlord confirmed that they did not make an Application for Dispute Resolution, return the tenants' security deposit or obtain the tenants' agreement in writing to retain any portion of the deposits. The landlord agreed that they did not receive the tenants' forwarding address until served with this Application.

Analysis

Section 38 (4) allows a landlord to retain from a security deposit if, at the end of the tenancy, the tenant agrees in writing that the landlord may retain an amount to pay a liability or obligation of the tenant.

If the landlord does not have the tenant's agreement in writing to retain a portion of the security deposit, section 38 (1) of the *Act* stipulates that within 15 days of either the tenancy ending or the date that the landlord receives the tenant's forwarding address in writing, whichever is later, the landlord must either repay any security or pet damage deposit or make an application for dispute resolution claiming against the security deposit or the pet damage deposit.

Residential Tenancy Branch Policy Guideline 17 establishes the following:

> *10. The landlord has fifteen 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 arbitration application claiming against the deposit, or return the deposit plus interest to the tenant.*

Having reviewed the evidence and testimony, I find that the tenant did not provide their forwarding address in writing to the landlord prior to serving the Application to them. I find that the policy guideline establishes that the tenant has to provide their forwarding address first and then allow the landlord 15 days to file an Application.

For the above reasons I dismiss the tenants' Application for the return of their deposits, with leave to reapply.

As the tenants have not been successful in their Application, I dismiss their request to recover the filing fee without leave to reapply.

I find that the landlord now has the tenants' forwarding address.

The landlord has 15 days from the date that they receive this decision, by e-mail, to return the deposits or to file an Application or to obtain the tenants' agreement in writing to retain any portion of the security or pet damage deposits. If the landlord does not file an Application within 15 days, the tenants are at liberty to reapply.

Conclusion

The Application for the return of the security and pet damage deposits is dismissed, with leave to reapply.

The Application for the recovery of the filing fee 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: February 27, 2019

Residential Tenancy Branch