



Dispute Resolution Services

Page: 1

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 landlord FW 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 had authority to speak on behalf of landlord RW, who was not present.

At the outset of the hearing, the landlord confirmed that they had received the tenants' evidence. As the landlord did not raise any issues regarding service of the application or the evidence, I find that the landlords were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue – Landlords' Evidence

The tenants claimed they did not receive the landlords' evidence package. The landlord testified that the package consisted of a two page written response. During the hearing the landlord presented this response orally and as such it has been considered in my decision.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for return of the security deposit?

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

Background and Evidence

As per the testimony of the parties, the tenancy began on October 1, 2017 on a fixed term until May 31, 2018 at which time the tenancy continued on a month-to-month basis. Rent in the amount of \$2,650.00 was payable on the first of each month. The tenants remitted a security and pet deposit in the total amount of \$2,650.00 at the start of the tenancy. The tenants vacated the rental unit on October 31, 2018, pursuant to a 2 Month Notice.

The tenants testified that they provided their forwarding address in writing on November 1, 2018. The landlord confirmed receipt of the forwarding address this date. The landlord contended that she tried to return the deposit by way of e-transfer three times. The landlord acknowledged that although the first e-transfer on November 15, 2018 did not clear due to her inadvertent error, the remaining two e-transfers should have cleared and been accepted by the tenants.

The tenants acknowledged that e-transfers were sent to them November 24, 2018, January 22, 2019 and February 18, 2019. They testified that because they had already filed an application and the transfers were made after the fifteen days allowable under the *Act*, they refused to accept them.

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 tenants 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. In the absence of written authorization from the tenant, the landlord must return the security deposit or file an application within fifteen days. Should the landlord fail to do this, the landlord must pay the tenant double the amount of the security deposit.

The landlord received the forwarding address on November 1, 2018. The landlord did not file an arbitration application to retain the deposit, the landlord did not return the deposit within fifteen days and the landlord did not receive written authorization to retain it. Based on this, I find the tenants are entitled to double the value of their security deposit in the amount of \$5,300.00.

As the tenants were successful in this application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$5,400.00.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$5,400.00 against the landlord.

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: March 07, 2019

Residential Tenancy Branch