



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened pursuant to the Tenants' Application for Dispute Resolution, made on November 8, 2018 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord return all or part of the security deposit and/or pet damage deposit; and
- an order granting recovery of the filing fee.

The Tenant K.F. and the Landlord attended the hearing at the appointed date and time, and provided affirmed testimony.

On behalf of the Tenants, K.F. testified that the Landlord was served with the Application package by registered mail. The Landlord acknowledged receipt. The Landlord testified the evidence upon which he intended to rely was served on the Tenants in person. K.F. acknowledged receipt. No issues were raised during the hearing with respect to service or receipt of the above documents. Accordingly, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

Both K.F. and the Landlord were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to an order that the Landlord return all or part of the security deposit and/or pet damage deposit?
2. Are the Tenants entitled to recover the filing fee?

Background and Evidence

The parties agreed the fixed-term tenancy began on June 1, 2018, and was expected to continue to May 31, 2019. During the tenancy, rent in the amount of \$1,100.00 per month was due on the 1st day of each month. The Tenants paid a security deposit of \$550.00 and a pet damage deposit of \$550.00, which the Landlord holds.

During the hearing, K.F. confirmed the Tenants seek the return of double the amount of the deposits because the Tenants felt obligated to vacate the rental unit before their intended vacate date of September 30, 2018.

According to K.F., the tenancy ended because the Tenants became concerned about mold in the rental unit that was not adequately addressed by the Landlord. As a result, K.F. called the Landlord on September 2, 2018, and advised that the Tenants wished to end the tenancy effective September 30, 2018. However, K.F. testified that the tenancy ended on or about September 15, 2018. K.F. testified the Tenants vacated at that time due to the Landlord's threats to follow through dispute resolution mechanisms and end the fixed-term tenancy on the basis rent had not been paid when due on September 1, 2018.

During the hearing, K.F. acknowledged rent was not paid when due on September 1, 2018. However, K.F. confirmed during the hearing that she advised the Landlord during a conversation on September 2, 2018, that he could keep the deposits on account of unpaid rent. However, the Tenants subsequently changed their mind because they felt pressured by the Landlord to vacate the rental unit before September 30, 2018.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the *Act* requires a landlord to repay deposits or make an application to keep them by making a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the amount of the deposits.

In addition, section 21 of the *Act* confirms "a tenant must not apply a security deposit or a pet damage deposit as rent." The language in the *Act* is mandatory. However, in this case, I find that, during their conversation on September 2, 2018, the Tenants permitted the Landlord to retain the deposits on account of unpaid rent that was due on September 1, 2018. This finding is based on the testimony of K.F., which I accept. As a result, and despite section 21 of the *Act*, I find that the deposits were dealt with at that time. Whether or not the Tenants are not entitled to the return of the security deposit and pet damage deposit does not need to be addressed, and has not been considered further in this decision.

I find that the Tenants' Application is dismissed, without leave to reapply.

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: March 13, 2019

Residential Tenancy Branch