



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL –S, MNSD, FFL, FFT

Introduction

This proceeding was scheduled to deal with monetary cross applications by way of a teleconference call hearing. The landlords applied for a Monetary Order for damages or loss under the Act, regulations or tenancy agreement; and, authorization to retain the tenant's security deposit and/or pet damage deposit. The tenants applied for a Monetary Order for return of the security deposit and pet damage deposit.

Preliminary and Procedural Matters

The tenants appeared at the hearing; however, there was no appearance on part of the landlords. The teleconference call was left open at least 10 minutes to provide the landlords the opportunity to appear. I confirmed that the teleconference call information provided to the landlords on their Notice of Hearing was correct. I also confirmed that the only parties' to have connected to the teleconference call were the tenants.

The tenants confirmed that they received the Landlord's hearing package and were prepared to respond to the landlords' claims against them. Since the landlords did not appear at the hearing to present their case against the tenants, I dismissed the Landlord's Application without leave to reapply.

The tenants testified that they sent their Application for Dispute Resolution to the male landlord at the landlord's service address that appears on the Landlord's Application for Dispute Resolution via registered mail on November 22, 2018. The tenants provided the registered mail tracking number as proof of service, which I have recorded on the cover page of this decision. The tenants testified that the registered mail sent to the landlord was returned to sender and the label affixed to the envelope by Canada Post indicates that it was returned because it was unclaimed. Section 90 of the Act deems a person to be in receipt of documents five days after mailing, even if the person refuses

to accept or pick up their mail. Pursuant to section 90 of the Act, I deemed the male landlord to be served with the Tenant's Application for Dispute Resolution five days after November 22, 2018.

Residential Tenancy Branch Policy Guideline 17 provides that where a landlord makes a claim against a tenant's security deposit and/or pet damage deposit and the landlord's claims are dismissed, a Monetary Order shall be provided to the tenant for the amount of the deposit. Accordingly, in keeping with policy guideline 17, I find the tenants entitled to a Monetary Order for return of the security deposit and/or pet damage deposit. The tenants testified that the landlord did send them a refund of the \$200.00 pet damage deposit but that the \$625.00 security deposit has not yet been returned. Therefore, I provide the tenants with a Monetary Order for return of the \$625.00 security deposit.

I note that in filing the tenant's Application, the tenants sought recovery of the filing fee they paid for their Application for dispute Resolution. During the hearing, I indicated to the tenants that I would award them recovery of their filing fee; however, upon further review of the applications before me, I have reconsidered that award based upon the following considerations.

Under section 38 of the Act, a landlord has 15 days after receiving the tenant's forwarding address or the end of the tenancy, whichever date is later, to either refund the deposit(s) to the tenant or make a claim against it by filing a Landlord's Application for Dispute Resolution. I note that the landlords filed their Application for Dispute Resolution on November 10, 2018; and, a hearing package was generated on November 13, 2018. The landlords had uploaded a registered mail receipt to show the landlord's hearing package was sent to the tenant on November 14, 2018 via registered mail. A search of the tracking number, which I have recorded on the cover page of this decision, shows that the hearing package was successfully delivered on November 15, 2018. The tenant confirmed that the service address the landlords provided for the tenant was the forwarding address she had provided to the landlords in writing.

The tenants filed their application to seek return of the deposits on November 15, 2018; however, I find their application was: (1) premature since it did not allow the landlord a full 15 days after the tenancy ended to make a claim; and (2) unnecessary since landlord's application to retain the deposits was delivered to the tenant's forwarding address on November 15, 2018. Therefore, I decline to award the tenants recovery of the filing fee they paid for their application.

Conclusion

The landlords' claims against the tenant and the tenant's security deposit and/or pet damage deposit are dismissed without leave to reapply.

In keeping with Residential Tenancy Policy Guideline 17, the tenants are provided a Monetary Order for return of the security deposit in the amount of \$625.00.

I have made no award for recovery of the filing fees.

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 14, 2019

Residential Tenancy Branch