



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This is an application by the tenants filed under the Residential Tenancy Act (the “Act”) for a monetary order for return of the security deposit (the “Deposit”) and the filing fee for the claim.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

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

Background and Evidence

The tenancy began on August 1, 2017. Rent in the amount of \$950.00 was payable on the first of each month. A security deposit of \$475.00 was paid by the tenants. The tenancy ended on October 31, 2018.

The tenants testified that they vacated the premises on October 31, 2018. The tenants stated that they provided the landlord with a written notice of the forwarding address on November 4, 2018, by registered mail, which was returned unclaimed.

The landlord testified that they did not receive the tenants' forwarding address. The landlord stated that they did not receive any documents from Canada post.

The landlord confirmed that they received the tenants' forwarding address in their application.

Analysis

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

Return of security deposit and pet damage deposit is defined in Part 2 of the Act.

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.

...

(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.

(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.

In this case, I am not satisfied that the landlords received the tenants' forwarding address as required by the Act, prior to the tenants making their application for the return of the Deposit.

The tenants did not provide a copy of the Canada Post tracking number. The Canada post tracking number that was submitted as evidence is dated January 7, 2019. Therefore, I cannot determine if the landlord was sufficiently served as required by the Act.

As the landlords confirmed they have the tenants' forwarding address by way of the tenants' application. I find the tenants' application is premature.

However, I find the landlords have been served, with the tenants' forwarding address on this date, March 25, 2019.

I Order the landlords, to comply with section 38 of the Act, by either returning the tenants security deposit or making an application claiming against the deposit by April 15, 2019.

Should the landlords fail to comply with my above Order, the tenants are entitled to make an application claiming double the deposit.

Conclusion

The tenants' application is dismissed with leave to reapply, should the landlords not comply with my above Order.

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 25, 2019

Residential Tenancy Branch