



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with the tenant's 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, including double the amount;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing. The landlord confirmed service of the tenant's application.

Issues

Are the tenants entitled to a return of all or a portion of the security deposit, including double the amount?

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

Background and Evidence

The tenancy began in May 2017 and ended on July 31, 2018. The tenants paid a security deposit of \$800.00 at the start of the tenancy.

On August 1, 2018 the landlord filed an application for compensation for loss and/or damage as well as unpaid rent. On December 3, 2018 a decision was issued granting the landlord a monetary order in the amount of \$717.50. The landlord applied for a review of this decision but in a decision dated December 13, 2018 the original decision was confirmed.

On December 22, 2018 the landlord attempted to return the balance of the security deposit to the tenants by e-transfer. The tenants rejected this transfer.

The tenants are claiming double the security deposit arguing that the landlord failed to return the security deposit within 15 days of the date the landlord received the tenants forwarding address in writing. The tenants provided a forwarding address by e-mail on August 1, 2018 upon the landlord's request for such so he could file his application. The tenant's submit they provided the forwarding address again by registered mail on August 10, 2018. The tenants acknowledge that the landlord filed an application and was awarded a monetary award; however, they argue that the landlord did not specifically claim to retain the security deposit.

The landlord argues he was granted an award in a previous decision and he has applied the security deposit against that award. The landlord argues that the tenants are simply filing this application based on a technicality.

Analysis

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has, at the end of the tenancy, consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. A landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit, pet deposit, or both, as applicable.

I find the landlord did file a claim for loss and/or damages and unpaid rent within fifteen days of the end of the tenancy or after obtaining the forwarding address from the tenants. I find the fact that the landlord did not specifically check off the application to include a request to retain the security deposit to be purely a technicality. The landlord was awarded \$712.50 in the decision dated December 3, 2018. As per section 72 of the Act, the landlord was entitled to deduct this from the security deposit.

The landlord attempted to return the balance of the security deposit in the amount of \$82.50 in a timely manner after the issuance of the December 13, 2018 review consideration decision. The tenants did not accept this amount. As the landlord still retains this amount, I order the landlord to return \$82.50 to the tenants forthwith.

The tenants claim is dismissed without leave to reapply.

As the tenants were not successful in this application, I find that the tenants are not entitled to recover the \$100.00 filing fee paid for this application from the landlord.

Conclusion

The tenants' application is dismissed without leave to reapply.

Pursuant to section 67 of the *Act*, I grant the tenants a Monetary Order in the amount of \$82.50. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: April 04, 2019

Residential Tenancy Branch