



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL, MNDCT, OCL, DRI, FFT

Introduction

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenants, in which they applied to cancel a Two Month Notice to End Tenancy for Landlord's Use; for an Order requiring the Landlords to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; for a monetary Order; to dispute a rent increase; and to recover the fee for filing this Application.

At the hearing the Tenant withdrew all of the Tenants' claims, with the exception of the application for a monetary Order and to recover the fee for filing the Application for Dispute Resolution. The Landlords did not object to this amendment and the Application was amended accordingly. It is apparent from information provided on the Application for Dispute Resolution that the application for a monetary Order relates to the return of the security deposit, and that matter will be considered at these proceedings.

The Tenant stated that in March of 2019 the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlords. The Landlords acknowledged receipt of these documents.

On March 14, 2019 the Tenant submitted 6 pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlords with the Application for Dispute Resolution. The Landlords deny receiving this evidence.

The Tenant was advised that the evidence submitted on May 14, 2019 could not be accepted as evidence, as the Landlords did not acknowledge receiving it. The Tenant was advised that the hearing would proceed; that she could refer to her documentary evidence during the hearing; and that she could request an adjournment if, at any point during the hearing, she deemed it necessary for me to view these documents. The Tenant did not request an adjournment for the purposes of re-serving this evidence.

On April 02, 2019 the Landlords submitted 7 pages of evidence to the Residential Tenancy Branch. The female Landlord stated that this evidence was posted at the rental unit on April 02, 2019. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On April 16, 2019 the Tenant submitted 1 page of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlords, via registered mail, on April 14, 2019. The Landlords acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

All of the accepted evidence has been reviewed, but is only referenced in this written decision if it is directly relevant to my decision.

Issue(s) to be Decided

Are the Tenants entitled to the return of their security deposit?

Background and Evidence

The Landlords and the Tenant agree that this tenancy began prior to the current Landlords purchasing the rental unit in November of 2015.

The Tenant stated that a security deposit of \$350.00 was paid to the original Landlord.

The Tenant stated that the Tenants vacated the rental unit after they filed this Application for Dispute Resolution, as they were able to find alternate accommodations.

The female Landlord stated that the Landlords initially believed that the security deposit was not forwarded to them by the seller of the rental unit, but they are now satisfied that it was transferred to them by the party that sold them the rental unit.

The Landlords and the Tenant agree that the \$350.00 deposit has not been returned to the Tenants.

Analysis

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits.

On the basis of the undisputed evidence I find that the Tenants filed this Application for Dispute Resolution prior to them vacating the rental unit. As the Application was filed prior to the end of the tenancy, I find that the Tenants' application to recover the security deposit was filed prematurely.

As the application to recover the security deposit was filed prematurely, I dismiss that application with leave to reapply. The Tenants retain the right to file another Application for Dispute Resolution seeking the return of the security deposit if the parties cannot resolve this issue now that the tenancy has ended.

I find that the Tenants have failed to establish the merit of their Application for Dispute Resolution and I therefore dismiss their application to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Tenants' application for the return of the security deposit and for a monetary Order is dismissed. The Tenants retain the right to file another Application for Dispute Resolution seeking the return of the security deposit.

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: May 04, 2019

Residential Tenancy Branch