



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlords:.....MNRL-S, FFL

Tenants:.....MNSD, FFT

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties. The Tenants applied for dispute resolution on February 19, 2019, seeking the return of double the security and pet damage deposits, and recovery of the \$100.00 Application filing fee. The Landlords applied for dispute resolution on May 14, 2019, for recovery of \$200.00 in unpaid rent, and for recovery of the \$100.00 Application filing fee.

Both Parties appeared at the teleconference hearing, 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 to make submissions to me.

Neither Party raised any concerns regarding the service of the Applications for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and the documentary evidence from the other Party and had reviewed it prior to the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the decision would be emailed to both Parties and any orders sent to the appropriate Party.

Issue(s) to be Decided

- Are the Landlords entitled to a monetary order, and if so, in what amount?
- Are the Tenants entitled to a monetary order, and if so, in what amount?
- Is either Party entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on December 15, 2016 and ran to December 14, 2017, and then operated on a month-to-month basis. The Parties agreed that the Tenants paid the Landlords a monthly rent of \$1,560.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlords a security deposit of \$750.00 and a pet damage deposit of \$780.00.

The Parties agreed that the tenancy ended on January 31, 2019, after the Landlords served the Tenants with a Two Month Notice to End the Tenancy for Landlord's Use. The Landlords sold the residential property.

Landlords' Claim

The Parties agreed that the Tenants withheld \$200.00 from the monthly rental payment in March 2018. The Tenants said that the supply of water to the residential property was an issue at times. The Tenants said they talked to the Landlords about not paying the full rent, because of this issue.

In the hearing, the Landlord, G.E., said:

I remember talking to [Tenant P.H.]; [Tenant S.H.] didn't want to pay \$200.00. The rent was late or they're going to pay us \$200.00 less. It frustrates me; at some time they had six horses there. That caused most of the problems with water. . . we raised three teenagers and three horses ourselves. We knew how to manage the water. They understood that going in.

Tenants' Claim

The Parties agreed that the tenancy ended on January 31, 2019, and that the Tenants provided the Landlords with their forwarding address on February 1, 2019, via text, which the Landlords accepted as written notice.

The Parties agreed that the Landlords sent the Tenants a certified cheque for \$1,530.00 - the security and pet damage deposits - via courier on February 26, 2019. The Parties agreed that

the Landlords were between 9 – 11 days late in returning the Tenants' deposits; however, the Landlords said: "It hasn't created a hardship, because they haven't even cashed it."

Analysis

Landlords' Claim

Section 26 of the Act states: "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent." There is no evidence before me that the Tenants had a right to deduct any portion of the rent from the monthly rent due to the Landlords. Pursuant to section 26 of the Act, I award the Landlords a monetary order of \$200.00 in recovery of the unpaid rent. This may be set off as described below.

Tenants' Claim

Section 38 of the Act states:

The Tenants provided their forwarding address on February 1, 2019, and the tenancy ended on January 31, 2019. Section 38(1) of the Act states the following:

- 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.

The Landlords were required to return the \$1,530.00 in deposits within fifteen days after February 1, 2019, namely by February 16, 2019, or make an application for dispute resolution to claim against the deposits, pursuant to Section 38(1). The Parties agreed that the Landlords returned the deposits beyond the 15 days required in section 38(1). Further, the Landlords did not apply for dispute resolution until May 14, 2019. Accordingly, I find the Landlords failed to comply with their obligations under Section 38(1) of the Act.

Section 38(6)(b) of the Act requires a landlord who does not comply with section 38(1) to “pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.” I therefore, award the Tenants with recovery of double the security and pet damage deposits in the amount of \$3,060.00. I find that the Landlords have already paid the Tenants \$1,530.00, so I direct the Tenants to cash that cheque. I grant the Tenants an order for \$1,530.00 from the Landlords, set off against the \$200.00 that the Landlords have been awarded from the Tenants in the amount of \$1,330.00.

Given that both Parties were successful in their claims, I decline to award the \$100.00 filing fee to either Party, as these are set off.

Conclusion

The Landlords’ claim for recovery of \$200.00 in unpaid rent is successful. The Tenants’ claim for recovery of double their security and pet damage deposits is successful in the amount of \$1,530.00. The filing fee for each Party is set off.

After the awards have been set off, I grant the Tenants a monetary order under section 67 of the Act from the Landlords in the amount of \$1,330.00. This order must be served on the Landlords by the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: June 26, 2019

Residential Tenancy Branch