



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlords: MNDCL-S FFL
For the tenants: MNSD FFT

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (“application”) seeking remedy under the *Residential Tenancy Act* (“Act”). The landlords applied for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee. The tenants applied for double the return of their security deposit, and to recover the cost of their filing fee.

The landlords, an agent for the landlord SV (“agent”), and the tenants attended the teleconference hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision. Neither party raised any concerns regarding the service of documentary evidence.

Issues to be Decided

- Is either party entitled to a monetary claim under the Act?
- What should happen to the tenants’ security deposit under the Act?
- Is either party entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A month to month tenancy began on September 15, 2018. Monthly rent in the amount \$1,400.00 was due on the 15th day of each month. A security deposit of \$700.00 was paid by the tenants at the start of the tenancy, which the landlords continue to hold.

The tenants stated that they sent a text to the landlords on January 17, 2019 stating that they would be vacating the rental unit effective February 15, 2019. The tenants vacated the rental unit on February 15, 2019.

Landlords' claim

The landlords are claiming \$700.00 to retain the tenants' security deposit in full towards the loss of February 2019 rent. The landlords testified that they were able to secure new renters who moved into the rental unit as of March 6, 2019 and paid a pro-rated amount of \$900.00 for the period of March 6, 2019 to March 31, 2019, with future rent being \$1,400.00 per month and due on the first day of each month. There is no dispute that the tenants did not pay any rent for the period of February 15, 2019 to March 15, 2019. The landlords clarified that they are only seeking to keep the tenants' security deposit of \$700.00 and the filing fee of \$100.00, and are not seeking anything additional.

Tenants' claim

The tenants are seeking the return of double their security deposit for a total of \$1,400.00. The tenants write in their application for "all the inconvenience & for being unreasonably rude during our stay in their property", however, the parties were advised that due to insufficient details under section 59 of the *Act*, that I would not be considering that aspect of their claim under the *Act* and would only be considering whether the landlords complied with section 38 of the *Act* in determining whether the tenants were entitled to the return of double their security deposit. In other words, I find the tenants' claim provided insufficient particulars as to how they reached the amount of \$1,400.00 and that the only particulars I am satisfied with are their claim for double the return of the security deposit, which was the claim served by the tenants on the landlords.

The tenants stated that they provided their written forwarding address to the landlords on February 27, 2019. The landlords filed their application to claim against the tenants' security deposit on March 8, 2019.

Analysis

Based on the documentary evidence and testimony of the parties, and on the balance of probabilities, I find the following.

Landlords' claim – The landlords are seeking to retain the tenants' \$700.00 security deposit, which I find has accrued no interest under the *Act*. Section 45(1) of the *Act* applies and states:

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) **is not earlier than one month after the date the landlord receives the notice, and**

(b) **is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.**

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

[Emphasis added]

Based on the above, I find the tenants breached section 45(1) of the *Act* by texting their intention to vacate on January 17, 2019, which is late notice to end the tenancy and not in the prescribed form in writing, effective February 15, 2019. I find the tenants should have provided written notice to the landlords no later than January 14, 2019 by midnight, as rent was due on January 15, 2019. Therefore, I find the tenants owe the landlords the loss of rent for the month of February 15, 2019 to March 15, 2019, and I award the full amount of **\$700.00** as claimed by the landlords.

As the landlords' claim has merit, I grant the landlords **\$100.00** for the recovery of the cost of the filing fee pursuant to section 72 of the *Act*.

Tenants' claim - The tenants are seeking the return of double their security deposit for a total of \$1,400.00. As noted above, the portion related to the tenants' claim for inconvenience and for being rude was being dismissed without leave to reapply due to insufficient details, which is required pursuant to section 59 of the *Act*. I will now deal with the remaining portion of the tenants' claim as to whether the landlords complied

with section 38 of the *Act* in determining whether the tenants were entitled to the return of double their security deposit.

The tenants stated that they provided their written forwarding address to the landlords on February 27, 2019. As the landlords filed their application to claim against the tenants' security deposit on March 8, 2019, I find the landlords complied with section 38 of the *Act* which states:

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.

[Emphasis added]

Based on the above, I find the landlords did make an application for dispute resolution claiming against the security deposit within 15 days of February 27, 2019. As a result, I find the tenants' claim has no merit and is dismissed without leave to reapply, due to insufficient evidence. I do not grant the tenants the recovery of the cost of the filing fee as their application has no merit.

As the landlord's application was successful, I grant the landlords the recovery of their filing fee in the amount of **\$100.00** pursuant to section 72 of the *Act*. I authorize the landlords to retain the tenants' entire \$700.00 security deposit, which has accrued no interest to date, in partial satisfaction of the landlords' monetary claim of \$800.00, which includes \$700.00 plus the \$100.00 filing fee. I grant the landlords a monetary order for the balance owing by the tenants to the landlords in the amount of \$100.00, pursuant to sections 67 and 72 of the *Act*.

Conclusion

The landlords' application is fully successful. The landlords have been authorized to retain the tenants' full security deposit of \$700.00, including \$0.00 in interest, which leaves \$100.00 owing by the tenants to the landlords. The landlords have been granted a monetary order for the balance owing by the tenants to the landlords in the amount of \$100.00, pursuant to sections 67 and 72 of the *Act*. Should the tenants fail to pay the landlords the \$100.00 amount owing, the landlords must serve the tenants with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

The tenants' application has no merit and is dismissed in full, without leave to reapply.

This decision will be emailed to both parties. The monetary order will be emailed to the landlords only for service on the tenants.

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: July 3, 2019

Residential Tenancy Branch