



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 double 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 are related to the return of the security deposit.

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.

Procedural matter

It should be noted for the record that the male tenant at the end of the hearing was rude calling the landlord derogatory names. The female tenant and or their witness were rude laughing and snickering.

The tenants are cautioned that poor behaviour is not acceptable. Should they display such behaviour at any future hearing, they may be excused from participating in the hearing.

Issue to be Decided

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

Background and Evidence

The tenancy began on January 1, 2016. Rent in the amount of \$900.00 was payable on the first of each month. A security deposit (the "Deposit") of \$450.00 was paid by the tenants.

The tenants testified that they vacated the premises on February 28, 2019. The tenants stated that they provided the landlord with a written notice of the forwarding address on February 28, 2019, as it was written on the move-out condition inspection report. Filed in evidence is a copy of the move-out condition inspection report.

The tenants testified that they did not receive their Deposit until March 25, 2019, which was delivered by Canada post to their secured mailbox.

The tenants testified that the landlord wrote the date of March 15, 2019 on the back of the envelope; however, Canada post did not stamp the envelope and they have no explanation why Canada post did not follow normal protocol. The tenants stated that they have no idea, when it was sent by the landlord as it was not sent by registered mail. Filed in evidence is a copy of the front and back of the envelope.

The landlord testified that they returned the Deposit by ordinary mail on March 15, 2019, which is in compliance with the Act.

DK for the tenant's argued that their exhibit 5 shows the landlord had made an application for dispute resolution on March 15, 2019, indicating they were seeking to retain the Deposit.

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.

In this case, I find the tenants have failed to prove the landlord has failed to comply with section 38 of the Act. The evidence of the landlord was that they repaid the Deposit on March 15, 2019, which was sent by ordinary mail through Canada post.

Although I accept the tenants received their Deposit on March 25, 2019; however, the Act states the Deposit must be repaid, not received. Section 88(c) of the Act states ordinary mail is an approved method of service.

Further, the landlord has no control on when Canada post delivers the mail or errors in Canada post processing, such as in this case Canada post did not postmark the date it was received. Therefore, I find the tenants have failed to prove that the Deposit was repaid after the 15 day timeframe.

While DK for the tenants argued the landlord's application for dispute resolution filed on March 15, 2019, refers to the retaining of the Deposit; however, it shows underneath that it was paid to the tenant's on March 15, 2019, and seeks that the cheque be held.

However, it was the tenants' choice to hold the cheque or to cash the cheque as they had the cheque in their possession on March 25, 2019 and the cheque was and is still cashable as of today's date, July 5, 2019.

Based on the above, I find the landlord has complied with section 38 of the Act, as they repaid the Deposit within 15 days after the tenancy ended. Therefore, I find the tenants' are not entitled to double the Deposit.

Since the tenants were not successful with their application, I decline to award the tenants the cost to recover the filing fee from the landlord. The tenants' application is dismissed without leave to reapply.

Conclusion

The tenants' application for return of double the Deposit is dismissed without leave to reapply.

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: July 05, 2019

Residential Tenancy Branch