



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

On April 26, 2019, the Tenants applied for a Dispute Resolution proceeding seeking a return of double the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “*Act*”), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenants attended the hearing. The Landlord attended the hearing with R.M. and D.S. attending as agents for the Landlord. All in attendance provided a solemn affirmation.

The Tenants advised that they served the Notice of Hearing package and some evidence to the Landlord by registered mail on or around April 26, 2019 and the Landlord confirmed that she received these documents. Based on this testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing package and some of the Tenants’ evidence.

In addition, the Tenants also advised that they served additional evidence to the Landlord by registered mail on July 17, 2019 and the Landlord confirmed that this package was signed for on July 20, 2019. The Tenants’ evidence consisted of a substantial amount of digital evidence and they sent an email to the Landlord to confirm if the Landlord could view this evidence; however, they did not receive a response. As this evidence was served in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, and as the Landlord confirmed during the hearing that she could view all of the digital evidence, I have accepted the Tenants’ evidence and will consider it when rendering this decision.

D.S. advised that the Landlord's evidence was served to the Tenants by courier on July 23, 2019 and the Tenants confirmed that they received this evidence. The Landlord's evidence was in digital format; however, she did not confirm whether the Tenants could view this evidence. As the Tenants advised during the hearing that they were able to view this evidence, and as this evidence was served pursuant to the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted this evidence, and I will consider it when rendering this decision.

I find it important to note that Section 59(2) of the *Act* requires the party making the Application to detail the full particulars of the dispute. During the hearing, the Tenants were asked if they had submitted a Monetary Order Worksheet or any document that would specifically outline their requests for monetary compensation totaling the \$15,000.00 that they were seeking. However, they did not submit such a document to the Landlord nor to the Residential Tenancy Branch.

Consequently, I do not find that the Tenants have made it abundantly clear to any party that they are certain of the exact amounts they believe are owed by Landlord for each breach of the *Act* that they are alleging. As I am not satisfied that the Tenants outlined their claims precisely, with clarity, I do not find that the Tenants have adequately established a claim for a Monetary Order pursuant to Section 59(2) of the *Act*. In addition, Section 59(5) allows me to dismiss this Application because the full particulars are not outlined. For these reasons, I dismiss this portion of the Tenants' Application with leave to reapply. However, it is important to note that Section 60(1) of the *Act* states that an application for Dispute Resolution must be made within 2 years of the date that the tenancy ends.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a return of double the security deposit?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on November 1, 2016 and ended when the Tenants vacated the rental unit. The Landlord advised that the tenancy ended on June 30, 2017; however, the Tenants advised that they vacated the rental unit on June 26, 2017. Rent was established at \$1,420.00 per month, due on the first day of each month. The Landlord advised that a security deposit was not paid; however, the Tenants stated that a security deposit of \$710.00 was paid to the Landlord.

Tenant K.S. advised that he paid the Landlord \$710.00 in cash on or around October 13, 2016 for a security deposit; however, he did not have a witness when he did this, nor did he obtain a receipt for this payment. The Tenants stated that the tenancy agreement was not completed together with the Landlord, as portions of the agreement were filled out by both parties, separately. However, it is their contention that the Landlord altered the tenancy agreement to reflect that a security deposit was not paid by the Tenants. They referenced their evidence submitted to prove that, as per the tenancy agreement, they paid a security deposit of \$710.00.

The Landlord advised that a security deposit was never collected from the Tenants and it was never documented in the tenancy agreement that a security deposit of \$710.00 was ever paid by the Tenants or collected. The Landlord cited an email sent by Tenant E.B., dated October 13, 2016, where he attached a copy of the tenancy agreement and this copy did not have an amount listed under the security deposit section. Furthermore, she also referenced email responses from a mortgage broker and a Credit Union corroborating her position that the tenancy agreement they received from the Landlord did not indicate that a security deposit was ever collected. Finally, the Landlord stated that she does not write the number "7" in the same manner as what appeared on the Tenants' evidentiary submission of the tenancy agreement and therefore, she could not have written on the tenancy agreement that \$710.00 was collected as a security deposit.

All parties agreed that a forwarding address in writing was provided by the Tenants on June 26, 2017 prior to vacating the rental unit.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the undisputed evidence before me, a forwarding address in writing was provided by the Tenants on June 26, 2017. However, the crux of this issue is whether a security deposit was paid or not. I find it important to note that the party making the Application bears the onus of proving their claim. While the Tenants' position is that they paid a deposit, they do not have a witness of this payment nor any other proof that this cash payment was allegedly made to the Landlord on or around October 13, 2016. Conversely, I have before me an email from Tenant E.B., dated October 13, 2016, to the Landlord with a tenancy agreement attached and in that tenancy agreement, the section for a security deposit is blank. Furthermore, I have evidence from the Landlord of a Credit Union and a mortgage broker confirming that a security deposit was never collected from the Tenants.

When reviewing the totality of the evidence before me, I find that the Landlord's evidence is more compelling and persuasive and carries more weight on the whole than the Tenants' evidence. As such, I am not satisfied, on a balance of probabilities, that the Tenants ever paid a \$710.00 security deposit to the Landlord. Consequently, I dismiss the Tenants' claim on this issue in its entirety.

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

Conclusion

Based on my findings above, I dismiss the Tenants' Application with respect to monetary compensation with leave to reapply. However, they may be out of time to reapply as it has been over 2 years since the date that the tenancy ended.

Based on my findings above, I dismiss the Tenants' Application with respect to the return of double the security deposit 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: August 8, 2019

Residential Tenancy Branch