



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This teleconference hearing was scheduled in response to an application filed by the Tenants on May 9, 2019 under the *Residential Tenancy Act* (the “Act”) for the return of the security deposit and pet damage deposit, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

Both Tenants were present for the teleconference hearing while no one called in for the Landlords. The Tenants were affirmed to be truthful in their testimony and stated that the Landlords were served in person with the Notice of Dispute Resolution Proceeding package and a copy of their evidence on May 10, 2019.

The Tenants submitted a signed witness letter which states that the witness was present when the Landlord was served in person on May 10, 2019. In the letter the witness states that two packages were served, one for each Landlord. I accept the affirmed testimony of the Tenants and the witness letter and find that the Landlords were duly served on May 10, 2019 with the notice of hearing documents and the Tenants’ evidence in accordance with Sections 88 and 89 of the *Act*.

Issues to be Decided

Are the Tenants entitled to the return of the security deposit and pet damage deposit?

Should the Tenants be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of the Tenants, not all details of the submissions are reproduced here.

The Tenants provided undisputed testimony regarding the tenancy and also submitted a written timeline of events into evidence. The Tenants stated that Tenant AB moved into the rental unit with another tenant who had been residing in the rental unit since 2013. The Tenants stated that they had permission from the Landlords to do so and then also received permission for Tenant KB to move into the rental unit in the summer of 2015. The Tenants stated that the original tenant moved out of the rental unit in November 2015 and although no new written tenancy agreement was signed, the terms of the tenancy were agreed upon verbally for the tenancy with Tenants AB and KB.

The Tenants stated that rent was initially \$1,050.00 but was reduced to \$950.00 during the tenancy due to changes to the parking situation. When the original tenant moved out in November 2015, the Tenants stated that they discussed the security deposit and pet damage deposit with the Landlords and the original tenant. They stated that it was agreed upon that the Tenants would pay \$1,050.00 to the original tenant as this was the amount he had paid the Landlords for the security deposit and pet damage deposit at the start of his tenancy in 2013.

The Tenants stated that this meant that the Landlords had the original \$1,050.00 deposit amount which became the amount paid for their deposit as the original tenant had since been refunded. The Tenants noted that no move-in inspection was completed when they started their tenancy in November 2015.

The Tenants submitted into evidence a letter from the original tenant dated June 27, 2017 in which the original tenant confirms that Tenant AB transferred him \$1,050.00 in the fall of 2015. Banking information was also submitted showing an e-transfer to the original tenant in the amount of \$1,050.00.

The Tenants also referenced email communication with the Landlords that was submitted into evidence. In particular, they referenced an email dated June 23, 2017 in which the Landlord offers to return \$750.00 of the deposit. The Tenants stated that this email is further proof that the Landlords had their deposit.

The Tenants testified that they moved out on May 31, 2017 and asked to have a move-out inspection conducted at this time but were denied by the Landlords. They also noted that they tried to give the keys and a letter with their forwarding address to the

Landlords but as they would not accept it, they left the keys and letter with their forwarding address in the laundry room of the property as requested by the Landlords.

The Tenants submitted a photo showing the keys and letter. They also submitted into evidence a witness letter dated July 6, 2017 in which the witness states that they were present at the time of move-out on May 31, 2017. The witness further notes that the Landlord was aware that the keys and request for return of the security deposit were left in the laundry room as the Tenant had made sure the Landlord had seen. The witness also noted that the Tenant had asked for a move-out inspection which the Landlords did not conduct.

The Tenants stated that they discussed through email the return of the security and pet damage deposit, but that they did not agree to any deductions from their deposits in writing. They stated that the Landlords sent them \$350.00 which they declined and then discussed a return of \$750.00 instead, which the Tenants stated that they also declined as no information was provided on how this amount was calculated. The Tenants submitted copies of the emails into evidence in which the parties discussed the Tenants' request for the return of the deposits.

The Tenants confirmed that they have not accepted any amount of their deposits back and did not agree in writing to any deductions. Therefore, the Tenants are requesting the return of double the deposits in the amount of \$2,100.00. They stated that the first communication they had from the Landlords regarding the deposits was on June 16, 2017 which was already past the 15 days allowable.

Analysis

The Tenants did not pay a security deposit or pet damage deposit directly to the Landlords. However, I accept the witness letter and banking information submitted into evidence by the Tenants that shows that the Tenants paid an amount of \$1,050.00 to the previous tenant, which I find to be the equivalent of paying this amount to the Landlords.

I also find that the email communication submitted into evidence establishes that the Landlords had a deposit from the Tenants as the parties discussed the Tenants' request for the return of the deposits and the Landlords discussed how much may be returned. Therefore, I accept that Tenants did pay a security and pet damage deposit in the amount of \$1,050.00.

Regarding the Tenants' claim for the return of the security deposit and pet damage deposit, I refer to Section 38(1) of the *Act* which 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.

I accept the testimony and evidence of the Tenants that the tenancy ended on May 31, 2017 and that their forwarding address was provided in writing on the same day. Therefore, I find that the Landlords had 15 days from May 31, 2017 to return the deposits or file a claim against them.

I have no evidence before me that the Landlords filed an Application for Dispute Resolution against the deposits. I also accept the Tenants' testimony that no amount has been returned. As stated in Section 38(4) of the *Act*, a landlord may retain an amount from the deposits that the tenant has agreed to in writing. However, I also find no evidence before me that the Tenants agreed to the Landlords withholding any amounts from the deposits and accept the testimony of the Tenants who confirmed this.

Therefore, I find that the Landlords were not in compliance with Section 38(1) of the *Act* and did not have the right under the *Act* to retain the deposits. As such, I find that Section 38(6) of the *Act* applies as follows:

- (6) If a landlord does not comply with subsection (1), the landlord
 - (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Accordingly, I find that the Tenants are entitled to double their deposits for a total of \$2,100.00.

As the Tenants were successful with their application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00. Pursuant to Section 67 of the *Act*, I find that the Tenants are entitled to a Monetary Order in the total amount of \$2,200.00.

Conclusion

Pursuant to Sections 38, 67 and 72 of the *Act*, I grant the Tenants a **Monetary Order** in the amount of **\$2,200.00** for the return of double the security deposit and pet damage deposit, and for the recovery of the filing fee paid for the application. The Tenants are provided with this Order in the above terms and the Landlords must be served with this Order as soon as possible. Should the Landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 19, 2019

Residential Tenancy Branch