



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT, MNSD

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on May 16, 2019 (the “Application”). The Tenants applied for return of the security deposit, compensation for monetary loss or other money owed and reimbursement for the filing fee.

The Tenants appeared at the hearing. The Landlord did not appear. I explained the hearing process to the Tenants who did not have questions when asked. The Tenants provided affirmed testimony.

The Tenants submitted evidence prior to the hearing. The Landlord did not. I addressed service of the hearing package and Tenants’ evidence.

The Tenants testified as follows. The hearing package and evidence were sent to the Landlord by registered mail May 16, 2019. The Landlord lived in the upper unit at the rental unit address during and at the end of the tenancy. The Landlord still resides in the upper unit.

The Tenants submitted a customer receipt with Tracking Number 1 on it. I looked this up on the Canada Post website which shows the package was delivered and signed for by the Landlord May 18, 2019. I do note that the delivery confirmation does not show the signature; however, it indicates that the “Signatory Name” is the Landlord.

Based on the undisputed testimony of the Tenants, customer receipt and Canada Post website information, I find the Landlord was served in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the “Act”). I also find the Tenants complied

with section 59(3) of the *Act* and rule 3.1 of the Rules of Procedure in relation to the timing of service.

As I was satisfied of service, I proceeded with the hearing in the absence of the Landlord. The Tenants were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence and oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

During the hearing, the Tenants confirmed they are seeking return of double the security deposit if I find the Landlord failed to comply with the *Act*.

Issues to be Decided

1. Are the Tenants entitled to return of double the security deposit?
2. Are the Tenants entitled to compensation for monetary loss or other money owed?
3. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

The Tenants testified as follows.

There was a verbal tenancy agreement between them and the Landlord in relation to the rental unit. The tenancy started September 30, 2018 and was a month-to-month tenancy. Rent was \$1,100.00 per month due in advance on the last day of each month. The Tenants paid a security deposit of \$550.00.

The tenancy ended April 28, 2019.

The Tenants provided the Landlord with their forwarding address in writing in person on April 28, 2019.

The Landlord did not have an outstanding monetary order against the Tenants at the end of the tenancy. The Tenants did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit. The Landlord did not apply to the RTB to keep the security deposit.

There was no move-in or move-out inspections done. The Landlord did not provide them with two opportunities to do a move-in or move-out inspection.

In relation to the compensation, the Tenants sought \$135.00 for nine hours of cleaning done at the start of the tenancy. Tenant K.V. testified that the rental unit was dirty upon move-in. She said the Tenants asked the Landlord to clean the rental unit. Tenant K.V. testified that the parties came to a verbal agreement that she would clean the rental unit for \$15.00 per hour. The Application states that two witnesses were present for the agreement. Tenant K.V. testified that she cleaned the rental unit for nine hours over three days.

The Tenants submitted the following evidence:

- A letter to the Landlord dated April 28, 2019 requesting return of the security deposit and providing a forwarding address;
- A Rental Application dated October 02, 2018; and
- A receipt issued to Tenant K.V. by the Landlord on September 15, 2018 for \$550.00.

Analysis

Section 38 of the *Act* sets out the obligations of a landlord in relation to a security deposit held at the end of a tenancy.

Section 38(1) requires a landlord to return the security deposit or claim against it within 15 days of the later of the end of the tenancy or the date the landlord receives a tenant's forwarding address in writing. There are exceptions to this outlined in sections 38(2) to 38(4) of the *Act*.

Based on the undisputed testimony of the Tenants, I accept that the tenancy ended April 28, 2019. Based on the undisputed testimony of the Tenants and letter in evidence, I accept that the Tenants provided the Landlord with their forwarding address April 28, 2019. The Landlord had 15 days from April 28, 2019 to repay the security deposit or claim against it. I accept the undisputed testimony of the Tenants that the Landlord did neither. I find the Landlord failed to comply with section 38(1) of the *Act*.

I do not find that the exceptions outlined in section 38(2) to 38(4) of the *Act* apply.

I accept the undisputed testimony of the Tenants that no move-in or move-out inspections were done and the Landlord did not provide them with two opportunities to do these inspections. Therefore, the Tenants did not extinguish their rights in relation to the security deposit under sections 24 or 36 of the *Act*. The exception in section 38(2) of the *Act* does not apply.

I accept the undisputed testimony of the Tenants that the Landlord did not have an outstanding monetary order against the Tenants at the end of the tenancy. The exception in section 38(3) of the *Act* does not apply.

I accept the undisputed testimony of the Tenants that they did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit. The exception in section 38(4) of the *Act* does not apply.

Given the Landlord failed to comply with section 38(1) of the *Act*, and that none of the exceptions apply, the Landlord is not permitted to claim against the security deposit and must return double the security deposit to the Tenants pursuant to section 38(6) of the *Act*. The Landlord must return \$1,100.00 to the Tenants. I note that there is no interest owed on the security deposit as the amount of interest owed has been 0% since 2009.

In relation to the Tenants' claim for \$135.00, I am not satisfied the Tenants have proven they are entitled to this given the absence of evidence to support the claim. The Tenants did not submit evidence that the rental unit was dirty upon move-in or that Tenant K.V. cleaned the unit for nine hours. The Tenants did not submit evidence of communications between the Landlord and themselves that support that there was an agreement about cleaning. The Application states that there were two witnesses present when the verbal agreement was made; however, the Tenants did not call witnesses to support their position. I acknowledge that the Tenants mentioned the \$135.00 in their April 28, 2019 letter to the Landlord; however, I do not find this compelling evidence in support of their position given it is a letter written by them and there is no evidence of a response from the Landlord. I find this is a situation where the Tenants could have submitted evidence in support of their position. In the absence of such evidence, I am not satisfied the Tenants are entitled to the \$135.00 sought. This claim is dismissed without leave to re-apply.

As the Tenants were partially successful in this application, I grant them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenants are entitled to a Monetary Order in the amount of \$1,200.00.

Conclusion

The Tenants are entitled to a Monetary Order in the amount of \$1,200.00 and I issue the Tenants a Monetary Order in this amount. This Order must be served on the Landlord as soon as possible. If the Landlord fails to comply with this Order, the 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 *Act*.

Dated: August 29, 2019

Residential Tenancy Branch