



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The tenants applied for the return of double their security deposit, and to recover the cost of the filing fee.

The tenants WN and RD ("tenants") and the landlord DS ("landlord") appeared at the teleconference hearing. The parties gave affirmed testimony. The hearing process was explained to the parties. During the hearing the parties presented their evidence. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

The landlord confirmed having received the tenants' documentary evidence and that they had the opportunity to review that evidence prior to the hearing. The landlord also confirmed that the landlords did not serve any documentary evidence in response to the tenants' application.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties were advised that the decision would be emailed to the parties.

Issues to be Decided

- Are the tenants entitled to the return of double their security deposit under the *Act*?
- Are the tenants entitled to the return of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on July 1, 2018 and was scheduled to revert to a month to month tenancy after one year. Instead, the tenants vacated the rental unit on April 27, 2019. During the tenancy, monthly rent was \$1,000.00 per month and was due on the first day of each month. The tenants paid a \$1,000.00 security deposit at the start of the tenancy, which the landlords continue to hold.

The tenant is seeking \$2,000.00, comprised of double the return of the \$1,000.00 security deposit for the landlord failing to return the security deposit. In addition, the tenants are seeking to recover the cost of the \$100.00 filing fee.

The landlord confirmed that he received the tenants' written forwarding address by text on May 1, 2019. The parties confirmed that as of the date of the hearing, the landlords have not returned any portion of the security deposit and have not filed a claim against retaining any portion of the tenants' security deposit.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or

tenancy agreement on the part of the landlords. Once that has been established, the tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenants did what was reasonable to minimize the damage or losses that were incurred.

I will first deal with the amount of the security deposit, which was \$1,000.00. Section 19(1) of the *Act* states that a landlord must not require or accept a security deposit that is greater than the equivalent of ½ of one month's rent payable under the tenancy agreement. As monthly rent was \$1,000.00 I find the landlords breached section 19(1) of the *Act* by requesting and accepting a \$1,000.00 security deposit, when the limit under the *Act* was \$500.00.

In addition to the above, section 38 of the *Act* applies 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.

(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.

[Emphasis added]

In the matter before me, I find that the landlords breached section 38 of the *Act* by failing to return the security deposit in full to the tenants within 15 days of receiving the

forwarding address of the tenant in writing as of May 1, 2019. Therefore, as the landlords also failed to make a claim against the tenants' security deposit within 15 days of May 1, 2019, I find the tenants are entitled to the return of double the original security deposit of \$1,000.00 for a total of **\$2,000.00**. I note that the tenants' security deposit accrued \$0.00 in interest since the start of the tenancy.

As the tenants' application was successful, I grant the tenants the recovery of the filing fee in the amount of **\$100.00** pursuant to section 72 of the *Act*.

Monetary Order – I find that the tenants have established a total monetary claim in the amount of **\$2,100.00**, comprised of \$2,000.00 for the doubled security deposit, plus the \$100.00 filing fee. I grant the tenants a monetary order pursuant to section 67 of the *Act* in the amount of **\$2,100.00**.

I caution the landlords not to breach sections 19 or 38 of the *Act* in the future.

Conclusion

The tenants' application is fully successful.

The tenants have established a total monetary claim of \$2,100.00 comprised of the return of double their security deposit in the amount of \$2,000.00, plus the \$100.00 filing fee.

The tenants have been granted a monetary order under section 67 of the *Act* in the amount of \$2,100.00. Should the landlords fail to pay this amount, this order must be served on the landlords and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The landlords have been cautioned not to breach sections 19 and 38 of the *Act* in the future.

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

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: September 3, 2019

Residential Tenancy Branch