



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38, including double the amount;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

Issues

Are the tenants entitled to a return of all or a portion of the security deposit, including double the amount?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenancy was for a one-year fixed term beginning on September 1, 2018 and set to expire August 31, 2019. The tenants ended the lease early and vacated the rental unit on May 1, 2019. The tenants paid a security deposit of \$1125.00 at the start of the tenancy which the landlord continues to hold.

The tenants are claiming double the security deposit arguing that the landlord failed to return the security deposit within 15 days of the date the landlord received the tenants forwarding address in writing. The tenants provided a forwarding address to the landlord in writing on May 1, 2019.

On behalf of the tenants, tenant M.K. testified that they sent an e-mail to the landlord in mid-April 2019 advising they were breaking the lease. By way of this e-mail, the tenants also advised the landlord that they understood that they would be surrendering their security deposit for breaking the lease and that they would not dispute this. M.K. testified that the lease was written in a way that they interpreted it as them having to surrender their deposit if they broke the lease early. M.K. testified that they later learned that the wording in the lease was not legal which is why they then sent a letter to the landlord on May 1, 2019 requesting the deposit be returned to their forwarding address. The tenants acknowledged that there is amount of \$1027.27 in outstanding utilities which they agreed could be withheld by the landlord from the deposit.

The landlord argues that the tenants advised him by e-mail in mid April 2019 that they would breaking the lease as early as the end of that month. The landlord argues that the tenants surrendered their security deposit because of providing such short notice. The landlord submits that he relied on the tenants surrendering of the deposit in offering a deal to the new tenants he had to secure on such short notice. The landlord testified that he included utilities as part of the rent for the new tenants who took over the remainder of the lease. The landlord submits that as the tenants agreed to surrender the deposit he did not file any claim against the deposit.

Analysis

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has, at the end of the tenancy, consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. A landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit, pet deposit, or both, as applicable.

I find the tenants broke this fixed term lease before the end of the one-year term and agreed in writing to forfeit their security deposit. As a result, I find the landlord relied on this assurance from the tenants in allowing them to break the lease early and securing new tenants at a loss. It was not open for the tenants to renege on this agreement after the fact.

I dismiss the tenants claim for return of the security deposit without leave to reapply.

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

Conclusion

The tenant's application 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: September 05, 2019

Residential Tenancy Branch