



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, 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 23, 2019 (the “Application”). The Tenants applied for the return of double the security deposit and reimbursement for the filing fee.

The Tenant appeared at the hearing. The Landlords appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties 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.

Issues to be Decided

1. Are the Tenants entitled to return of double the security deposit?
2. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

The parties agreed on the following. There was a verbal tenancy agreement between the Landlords and Tenants in relation to the rental unit. The tenancy started July 01, 2018 and was a month-to-month tenancy. Rent was \$1,250.00 due on the first day of each month. The Tenants paid a \$625.00 security deposit.

The parties agreed the tenancy ended March 31, 2019.

The Tenant testified that the Tenants provided their forwarding address to the Landlords in a letter dated April 28, 2019 which was mailed to the Landlords. The letter was submitted as evidence.

The Landlord acknowledged receiving the letter with the Tenants' forwarding address around April 28, 2019. He could not provide a date.

The parties agreed on the following. The Landlords 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 Landlords could keep some or all of the security deposit. The Landlords did not apply to keep the security deposit.

The Landlord testified that he e-transferred \$525.00 of the security deposit to the Tenants May 14, 2019. The Tenant agreed with this.

The parties agreed that both parties did a move-in and move-out inspection.

The Landlord testified that the full security deposit was not returned to the Tenants because the rental unit was not clean on move-out. He said it cost \$100.00 to have it cleaned.

Analysis

Section 38 of the *Residential Tenancy Act* (the "Act") sets out the obligations of landlords in relation to security deposits held at the end of a tenancy.

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

Given the testimony of the parties, I accept the tenancy ended March 31, 2019.

Given the testimony of the parties, I accept the Tenants mailed their forwarding address to the Landlords April 28, 2019. The Landlord did not know what date he received the forwarding address but agreed he received it around April 28, 2019. I find the forwarding address was sent in accordance with section 88(c) of the *Act*. Pursuant to section 90(a) of the *Act*, the Landlords are deemed to have received it May 03, 2019.

May 03, 2019 is the relevant date for the purposes of section 38(1) of the *Act*. The Landlords had 15 days from May 03, 2019 to repay the deposit in full or file a claim against the security deposit.

There is no issue the Landlords did not repay the security deposit in full by May 18, 2019. There is no issue the Landlords only returned \$525.00 of the security deposit. There is no issue the Landlords did not file a claim with the RTB claiming against the security deposit.

The Landlords failed to comply with section 38(1) of the *Act*.

Given the testimony of the parties, I find the following. The Landlords 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 Landlords could keep some or all of the security deposit. Both parties did a move-in and move-out inspection. Given these findings, the exceptions outlined in sections 38(2) to 38(4) of the *Act* do not apply.

Given the Landlords failed to comply with section 38(1) of the *Act*, and that none of the exceptions outlined in sections 38(2) to 38(4) of the *Act* apply, the Landlords are 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*.

I acknowledge that the Landlord testified that \$100.00 of the security deposit was held back because the rental unit was not clean. However, the Landlords were not permitted to hold back \$100.00 for cleaning without filing a claim with the RTB within 15 days of receiving the Tenants' forwarding address.

Policy Guideline 17 deals with security deposits and states at page three:

5. The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:

Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit ($\$400 \times 2 = \800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is \$525.00 ($\$800 - \$275 = \525).

This example applies here. The \$625.00 security deposit is doubled which equals \$1,250.00. There is no interest owed on the security deposit as the amount of interest owed has been 0% since 2009.

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

In total, the Tenants are entitled to \$1,350.00.

I note that there is an indication in the Application that the Tenants declined the \$525.00 sent. Neither party mentioned this at the hearing. I have issued the Tenants a Monetary Order for the full amount of \$1,350.00. **If the Tenants accepted the \$525.00 e-transfer sent May 14, 2019, the Tenants are only permitted to enforce the Monetary Order up to \$825.00. If the Tenants declined the \$525.00 e-transfer sent May 14, 2019, the Tenants can enforce the Monetary Order for the full amount of \$1,350.00.**

Conclusion

The Tenants are entitled to \$1,350.00 and I issue the Tenants a Monetary Order in this amount. This Order must be served on the Landlords as soon as possible. If the Landlords fail to comply with the Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that court.

I note that there is an indication in the Application that the Tenants declined the \$525.00 sent. Neither party mentioned this at the hearing. I have issued the Tenants a Monetary Order for the full amount of \$1,350.00. **If the Tenants accepted the \$525.00**

e-transfer sent May 14, 2019, the Tenants are only permitted to enforce the Monetary Order up to \$825.00. If the Tenants declined the \$525.00 e-transfer sent May 14, 2019, the Tenants can enforce the Monetary Order for the full amount of \$1,350.00.

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: September 11, 2019

Residential Tenancy Branch