



Dispute Resolution Services

Page: 1

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 27, 2019 (the “Application”). The Tenants applied for return of the security deposit and reimbursement for the filing fee.

The Tenant and Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties 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 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 the security deposit?
2. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence. The tenancy started July 01, 2018 and was for a fixed term ending June 30, 2019. The Tenants paid a security

deposit of \$1,625.00. The agreement shows the Tenants paid a pet damage deposit; however, the parties agreed the Tenants did not do so. The agreement in evidence is signed by the Tenants but not the Landlords. The parties agreed the written tenancy agreement is accurate.

The parties agreed the tenancy ended April 30, 2019.

The Tenant testified that he emailed the Landlord his forwarding address May 24, 2019.

The Landlord acknowledged receiving the Tenants' forwarding address May 24, 2019 and took no issue with the form in which it was sent.

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 Landlord advised he filed an Application for Dispute Resolution August 15, 2019. He provided File Number 1. The Landlord has applied for compensation for monetary loss or other money owed, to recover unpaid rent and to keep the security deposit.

The Landlord confirmed he still holds the entire security deposit.

The parties agreed the Landlord did a move-in inspection with an agent for the Tenants.

The parties agreed the Tenant did a move-out inspection with an agent for the Landlord.

Analysis

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

Section 38(1) requires landlords 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 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 find the tenancy ended April 30, 2019.

Given the testimony of the parties, I find the Tenants provided the Landlords with their forwarding address May 24, 2019. This should have been provided in writing and not by email. However, I find the email sufficient given the Landlord acknowledged receiving it and did not take issue with how the forwarding address was provided.

May 24, 2019 is the relevant date for the purposes of section 38(1) of the *Act*. The Landlords had 15 days from May 24, 2019 to repay the security deposit or file a claim against it.

There is no issue that the Landlords did not repay the security deposit as the Landlord confirmed he still holds the entire security deposit.

The Landlord filed an Application for Dispute Resolution. However, this was filed August 15, 2019, well outside the 15-day time limit in section 38(1) of the *Act*.

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

Given the testimony of the parties in relation to the Tenant or an agent for the Tenants participating in the move-in and move-out inspections, I find the Tenants did not extinguish their rights in relation to the security deposit under sections 24 or 36 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.

Given the above, I find that the exceptions to section 38(1) 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 apply, the Landlords are not permitted to claim against the security deposit and would have had to return double the security deposit to the Tenants pursuant to section 38(6) of the *Act*. However, the Tenant waived this right during the hearing. Therefore, the Landlords must only return the original amount of \$1,625.00 to the Tenants. There is no interest owed on the security deposit as the amount of interest owed has been 0% since 2009.

To be clear, the Landlords must return the security deposit to the Tenants immediately and are not permitted to keep it until File Number 1 is heard and decided.

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 a Monetary Order in the amount of \$1,725.00.

Conclusion

The Tenants are entitled to a Monetary Order in the amount of \$1,725.00 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 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: September 11, 2019

Residential Tenancy Branch