



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNSD

Introduction

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

- authorization to obtain a return of double their security deposit in the amount of \$2,250 pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

At the hearing, the tenants were by tenant DK and the landlords by landlord MD. Both were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Tenant DK testified, and landlord MD confirmed, that the tenants served the landlords with the notice of dispute resolution form and supporting evidence package. Landlord MD testified, and tenant DK confirmed, that the landlords served the tenants with their evidence package. I find that all parties have been served with the required documents in accordance with the Act.

Issue(s) to be Decided

Are the tenants entitled to:

- 1) the return of two times the amount of their security deposit; and
- 2) recover their filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written, fixed-term tenancy agreement starting September 4, 2019 and ending April 30, 2019. Monthly rent was \$2,250. The tenants paid the landlords a security deposit of \$1,125. The landlord still retains this deposit.

A move-in condition inspection report was completed on September 3, 2018. A signed copy of the inspection report was entered into evidence. A move-out condition inspection report was completed on May 18, 2019. Only one tenant was present when the move-out condition inspection walkthrough was conducted by the landlord.

Tenant DK testified that the tenancy ended on April 30, 2019. She testified that the tenants sought the return of the security deposit from the landlord. She testified that the landlords refused to return the deposit on the basis that the tenants caused significant damage to the vinyl hardwood flooring of the rental unit.

At the hearing, Tenant DK agreed that the floor is damaged as alleged by the landlords but denied that the tenants were responsible for damaging it.

Both tenant DK and landlord MD spent a significant amount of time at the hearing making submissions as to the condition of the floor, the possible causes of the damage, as the cost to repair. I will not recount the specifics of these submissions as they are not relevant to the tenants' application.

Landlord MD testified that the landlords have not yet commenced a claim against the tenants to recover the costs of repairing the floor. He testified that the landlords wanted to see the outcome of this hearing before commencing their own claim.

Tenant DK testified that the tenants provided their forwarding addresses to the landlord via two letters sent by registered mail on May 28, 2019. The tenant provided Canada Post Tracking Numbers for these letters, which are reproduced on the cover of the decision. The letters were returned to the tenants marked "unclaimed." Tenant DK submitted photos of two envelopes bearing the landlord's address for service and the Canada Post Return to Sender sticker indicating the envelopes were unclaimed.

Landlord MD denied ever receiving these letters or receiving notifications from Canada Post that these letters were available for pick up. He confirmed that the address they

were sent to is his address for service. He speculates that he did not receive either letter due to an error on the part of Canada Post.

Analysis

Section 38(1) of the Act 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.

Based on the testimony of the parties, I find that the tenancy ended on April 30, 2019.

Based on my review of the evidence, I find that:

- 1) the tenants sent their forwarding address letters to the landlords by registered mail on May 28, 2019.
- 2) these letters were sent to the landlords' address for service.
- 3) These letters were returned to the tenants as "unclaimed".

Based on the evidence before me, I am not persuaded by landlord MD's argument that the landlord did not received notification from Canada Post that the letters containing the forwarding address were available for pickup. I find it highly unlikely that Canada Post would make such an error of *two* separate letters. Rather, I find it more likely that the landlords had notice that the letters containing the forwarding addresses of the tenants were available for pickup, but that the landlords failed to retrieve them.

As such, pursuant to section 90 of the Act, I deem that the landlords were provided with the tenants' forwarding address on June 2, 2019, 5 days after sending them by registered mail.

I find that the landlords have not returned the security deposit to the tenants within 15 days of receiving the forwarding address, or at all.

I find that the landlords have not made an application for dispute resolution claiming against the security deposit within 15 days of receiving the forwarding addresses from the tenants.

It is not enough for the landlords to allege the tenant damaged the rental unit. They must actually apply for dispute resolution, claiming against the security deposit, within 15 days from receiving the tenants' forwarding addresses.

The landlords did not do this. Accordingly, I find that they have failed to comply with their obligations under section 38(1) of the Act.

Section 38(6) of the Act sets out what is to occur in the event that a landlord fails to return or claim the security deposit within the specified timeframe:

- (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.

The language of section 38(6)(b) is mandatory. As the landlords have failed to comply with section 38(1), I order that they pay the tenants double the amount of the security deposit (\$2,250), payable forthwith.

I note that this order does not extinguish the landlords' right to bring a monetary claim for damages against the tenants at a later date. I make no findings with regards to the validity of any such claim the landlords may have. The landlords are cautioned to consult the Act for the time frame in which they may do this.

As the tenants have been successful in their application I order that that the landlords reimburse them their filing fee of \$100.

Conclusion

Pursuant to section 38, 67, and 72 of the Act, I order that the landlords pay the tenants \$2,350, an amount representing two times the security deposit plus the tenants' filing fee.

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: October 07, 2019

Residential Tenancy Branch