



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenants under the *Residential Tenancy Act* (the “Act”) for the return of the security deposit, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

Both Tenants and the Landlord were present for the hearing. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenants’ evidence. The Tenants confirmed receipt of a copy of the Landlord’s evidence. Neither party brought up any issues regarding service during the hearing.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

Issues to be Decided

Are the Tenants entitled to the return of the security deposit?

Should the Tenants be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy which were confirmed by the tenancy agreement that was submitted into evidence. The tenancy started on May 1, 2018 and ended on March 31, 2019. Monthly rent was \$2,500.00 and a security deposit of \$1,250.00 was paid at the start of the tenancy.

The Tenants testified that they provided their forwarding address to the Landlord at the time of the move-out inspection on March 31, 2019. However, they noted that as they had not received the deposit back they also sent the Landlord a letter by registered mail with their forwarding address. The Tenants submitted a copy of the letter into evidence dated April 15, 2019. The Tenants also submitted a copy of the move-out inspection signed by both parties on March 31, 2019, although no forwarding address is noted on this report.

The Tenants stated that despite multiple phone calls and text messages to the Landlord they did not hear back regarding their security deposit. They stated that they had discussed paying the remaining utility bills but were not able to confirm an exact amount until they had seen the bills. However, they stated that the Landlord told them he had not received the bills yet and would provide the bills once he did. Therefore, there was no agreement in writing regarding how much to withhold from the security deposit for utility bills.

The Tenants testified that on July 25, 2019 they received a cheque in the mail from the Landlord for \$847.41 although the envelope was posted on July 15, 2019. The Tenants provided a photo of the envelope and cheque into evidence. The Tenants also noted that they did not receive a copy of the utility bills at the time so were still unaware of what they were being charged for utilities.

The Tenants stated that as they have now seen the utility bills through the Landlord's evidence they are in agreement as to the amount withheld by the Landlord for the utility bills. However, they are still seeking compensation for double the security deposit in the amount of \$1,250.00 due to not receiving the deposit back within the allowable timeframe. The Tenants also questioned the delay in the Landlord confirming the utility bill amounts given that the bills were dated in March, April and May 2019 and they did not receive a portion of the deposit back until July 2019.

The Tenants confirmed that they did not agree to any other deductions from their security deposit.

The Landlord stated that he did not receive the final utility bills until months after the tenancy had ended and therefore was unable to confirm the amount to be withheld until they had been received. He also noted that he was away for work for a significant amount of time and therefore not able to respond as soon as the bills were received.

The Landlord confirmed receipt of the Tenants' forwarding address through a letter sent by registered mail but was unsure as to the date the letter was received. The Landlord sent the cheque in the amount of \$847.41 to the Tenants in July 2019 at their forwarding address.

The Landlord stated that the Tenants have received their full security deposit back after deductions for the utility bills and therefore he does not owe them any more money. He stated that any delay in sending them the money was unavoidable due to not having the utility bills when the tenancy ended.

The Landlord confirmed that he did not file an Application for Dispute Resolution to retain an amount from the security deposit. He stated that he had discussed with the Tenants that they would pay the utility bills once the utility bills were received and an exact amount was confirmed.

Analysis

As the Tenants applied for the return of the security deposit, I refer to Section 38(1) of the *Act* which states the following:

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.

The parties were in agreement that the tenancy ended on March 31, 2019. Although the Tenants stated that their forwarding address was provided on this date as well, the Landlord was not in agreement. As the move-out inspection does not include a forwarding address and in the absence of any other evidence that would confirm that the forwarding address was provided on March 31, 2019, I am not satisfied that it was.

However, I accept the letter submitted into evidence by the Tenants dated April 15, 2019. This letter includes their forwarding address and the Tenants stated that it was sent to the Landlord by registered mail. Although the Landlord was unsure of the date of receipt of the Tenants' forwarding address, he was in agreement that he received their forwarding address by registered mail. Therefore, I find that the letter was mailed to him on or around April 15, 2019 and therefore is deemed received 5 days later on April 20, 2019 as per the deeming provisions of Section 90 of the *Act*.

As such, I find that the Landlord had 15 days from April 20, 2019 to return the deposit or file an Application for Dispute Resolution to retain an amount from the deposit. The Landlord testified that he did not file an application against the deposit and I accept the evidence before me that a portion of the deposit was not returned until around July 15, 2019. Accordingly, I find that the Landlord was not in compliance with Section 38(1) of the *Act* and Section 38(6) of the *Act* applies as follows:

- (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.

I also note that a landlord may retain an amount from the deposit that the tenant agrees to in writing pursuant to Section 38(4)(a) of the *Act*. I do not find any evidence before me that the Tenants agreed in writing to the deductions or that the Landlord had the right under Section 38 of the *Act* to withhold any amount from the security deposit. Therefore, pursuant to Section 38(6) of the *Act*, I find that the Tenants are entitled to the return of double the security deposit in the amount of \$2,500.00.

However, I accept the testimony of the Tenants that they have agreed to pay the utility bill amount as deducted by the Landlord and that they have already received an amount of \$847.41 back.

As for the Landlord's position that he was unable to return the deposit until the utility bills were received, I do not find that this meets the requirements of Section 38(1) of the *Act*. Instead, the Landlord had options to file for dispute resolution for any outstanding amounts owing from the tenancy or to reach an agreement in writing with the Tenants. However, I find that the Landlord retained the remainder of the deposit well after the 15 days provided under the *Act* with no authorization under the *Act* to retain any amount. As such, I find that the Tenants are entitled to an amount of \$1,250.00 to double their deposit, pursuant to Section 38(6) of the *Act*.

As the Tenants were successful with their application, I award the recovery of the filing fee in the amount of \$100.00, pursuant to Section 72 of the *Act*. The Tenants are granted a Monetary Order in the amount of \$1,350.00.

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a **Monetary Order** in the amount of **\$1,350.00** as outlined above. The Tenants are provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this 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 *Residential Tenancy Act*.

Dated: October 16, 2019

Residential Tenancy Branch