



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDCL

Introduction

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

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and,
- authorization to recover the filing fee for this application pursuant to section 72.

The tenants attended the hearing. The tenants had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

The landlords did not attend the hearing. I kept the teleconference line open for the duration of the hearing, commencing at the scheduled starting time of 1:30 pm and ending at 1:40 pm, to allow the landlords the opportunity to call. The teleconference system indicated only the tenants and I had called into the hearing. I confirmed the correct participant code was provided to the landlord.

Preliminary Matter – Non-Appearance of Tenants at the Hearing

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* provides as follows:

7.3 Consequences of not attending the hearing – If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution

hearing in the absence of that party or dismiss the application with or without leave to reapply.

As the applicant tenants did not attend the hearing, and in the absence of any evidence or submissions, I order the landlords' application be dismissed without leave to reapply.

Issue(s) to be Decided

Are the tenants entitled to a return of their security deposit pursuant to section 38?

Background and Evidence

The tenant's testified that they paid a \$950.00 security deposit to the landlords. The tenants testified that they moved out of the rental unit on August 13, 2019. The tenants testified that they instructed the landlords to send their security deposit to the rental unit with the understanding the mail would be forwarded to their new address by Canada Post. The tenants testified that they did not receive a return of any portion of their security deposit.

Analysis

Based upon the undisputed testimony, as corroborated by the tenancy agreement, I find that the tenants paid the landlord a security deposit of \$950.00.

Section 38 of the Act states that the security deposit must be returned to the tenants within 15 days of vacating the rental unit and providing their forwarding address unless the landlords obtain an order to retain the security deposit. I find that the tenants have vacated the rental unit more than 15 days again. Furthermore, I find that the tenants have sufficiently provided their forwarding address by instructing the landlords to mail the return of the security deposit to the rental unit. In addition, as set forth above, the landlords' application to retain the security deposit has already been dismissed herein.

Accordingly, I find that the tenants have shown good cause for an order for the return of their security deposit pursuant to section 38. A such, I grant the tenants a monetary order in the amount of \$950.00.

Conclusion

The landlords' application is dismissed without leave to reapply.

I grant the tenants a monetary order in the amount of **\$950.00**. If the landlord fails to comply with this order, the tenants may file the order in the Provincial Court to be 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: December 12, 2019

Residential Tenancy Branch