



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

In this dispute the tenants sought the return of their security deposit, and recovery of the filing fee, pursuant to sections 38 and 72 of the *Residential Tenancy Act* ("Act").

The tenants applied for dispute resolution on September 17, 2019 and a dispute resolution hearing was held on January 28, 2020. The parties attended and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. No issues regarding service were raised by the parties.

I have reviewed evidence submitted that met the *Rules of Procedure* and to which I was referred but have only considered evidence relevant to the issues of this application.

Issues

1. Are the tenants entitled to the return of their security deposit?
2. Are the tenants entitled to recovery of the filing fee?

Background and Evidence

The tenancy began on December 15, 2018 and ended on August 15, 2019. Monthly rent was \$1,500.00 and the tenants paid a security deposit of \$750.00. The landlord returned \$200.00 of the security deposit on or about August 20, 2019 but retained \$550.00 of the security deposit. There was no pet damage deposit.

The parties acknowledged that there was no condition inspection report completed at the start, or at end, of the tenancy, and, that there was no written agreement whereby the tenants agreed to let the landlord keep the \$550.00. Further, the tenants testified that they did not provide their forwarding address to the landlord until after they filed their application for dispute resolution.

The landlord did not disagree with most of the tenants' testimony submissions but testified that he had a "handshake" agreement with the tenants about him keeping the money for a variety of damages and cleaning expenses. He "tried to be as fair as possible," and, while the total costs ended up being in excess of \$2,000.00, he thought it would be fair to simply keep the \$550.00. There was "considerable damage" but he apologized for not keeping a written record of this.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In this dispute, the onus is on the tenants to prove that the landlord failed to comply with the Act and that they are therefore entitled to a return of the security deposit.

However, as explained to the parties at the beginning of the hearing, the law regarding security deposits is rather procedural in nature: both parties are required to fulfill, or meet, specific requirements. In other words, both the landlord and the tenants have responsibilities under section 38 of the Act.

Section 38(1) of the Act requires that within 15 days after the later of the date the tenancy ends, or the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following: (1) repay any security deposit or pet damage deposit to the tenant, or (2) apply for dispute resolution claiming against the security deposit or pet damage deposit, or both.

In this dispute, the landlord did not receive the tenants' forwarding address in writing until after the tenants filed for dispute resolution. Where a tenant seeks the return of the security deposit, the tenant bears the burden to prove when and how a written forwarding address was given to the landlord since a landlord is not required to take action with respect to the security deposit unless a written forwarding address is received from the tenant. The tenants testified that they did not provide their forwarding address in writing until after they filed for dispute resolution. In such cases, providing the forwarding address after a tenant files for arbitration essentially "freezes" the landlord's obligations in respect of returning the security deposit.

Residential Tenancy Branch Practice Directive 2015-01 directs that where a tenant provides a forwarding address to a landlord after an application for dispute resolution is filed, that the date from which the address is provided does not start on the date of that

application. As such, it is for me to determine when the landlord is deemed to have received the tenants' forwarding address in writing for the purposes of section 38.

I confirmed with the tenants that the address as listed in their application for dispute resolution is their current forwarding address. The tenants' forwarding address is included on the cover page of this decision for the landlord's reference.

Thus, I order that the landlord is deemed to have received the tenants' forwarding address in writing as of January 31, 2020. He therefore has 15 days from January 31, 2020, to either (A) return the security deposit of \$550.00, or (B) file for dispute resolution claiming against the deposit.

The landlord is cautioned that the doubling provision under section 38(6) may apply if one of these two noted options are not exercised within 15 days.

As the tenants did not meet their obligation under section 38 of the Act, their application is dismissed. They are not entitled to recovery of the filing fee.

Conclusion

This application is dismissed with leave to reapply.

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: January 28, 2020

Residential Tenancy Branch