



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFT MNDCT MNSD

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of the security and pet damage deposit pursuant to section 38; and
- authorization to recover the filing fee from the landlord pursuant to section 72.

The landlord did not attend this hearing which lasted approximately 10 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The tenant appeared and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that they had served the landlord with the notice of hearing and evidence by registered mail sent to the landlord's address for service on or about August 27, 2019. Based on the evidence I find that the landlord was deemed served with the materials on September 1, 2019 in accordance with sections 88, 89 and 90 of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed? Are the tenants entitled to a return of the deposits for the tenancy? Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant testified that this tenancy began in February 2019 and ended July 31, 2019. Monthly rent was \$1,250.00 payable on the 15th of each month. A security deposit of \$625.00 and pet damage deposit of \$625.00 were paid at the start of the tenancy and are still held by the landlord.

The tenant submits that they felt unsafe in the rental unit due to the landlord's failure to complete repairs and to enter the suite without authorization or notice. The tenant seeks a monetary award in the amount of \$1,000.00 for moving costs.

The tenant sent an email to the landlord requesting the return of the deposits for this tenancy on August 5, 2019. The tenant did not provide a physical mailing address but stated that funds could be transferred to the email address provided. The tenant did not give written authorization that the landlord may retain any portion of the deposits.

Analysis

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to section 38(6) of the *Act* equivalent to the value of the security deposit.

In the present case while the tenant has provided an email address where the landlord may transfer the funds, they have not provided a forwarding address as contemplated under the *Act*. An email account for e-transfer is not a forwarding address and therefore I find that the running of time has not yet started. The landlord's obligation to return the deposit or file an application for authorization to retain all or a portion of the deposits will only commence upon being provided a forwarding address in writing by the tenant. I dismiss this portion of the tenant's application with leave to reapply.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has

been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The tenant seeks a monetary award in the amount of \$1,000.00 for moving costs but I find their submission that this is a cost incurred due to the violations of the landlord to be supported in the evidence. The correspondence between the parties detail some complaints and request for repairs. I find this is insufficient to establish that the tenant was required to move or that they incurred any costs from vacating the rental unit. Furthermore, while the tenant seeks an amount of \$1,000.00 they have provided little documentary evidence or testimony to demonstrate that this figure has any basis in real costs incurred. I find that the tenants have not met their evidentiary burden and consequently dismiss this portion of the application.

As the tenant's application was not successful they are not entitled to the filing fee for this application.

Conclusion

The portion of the tenant's application seeking a return of the deposits is dismissed with leave to reapply.

The balance of the application is dismissed without 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 *Residential Tenancy Act*.

Dated: January 3, 2020

Residential Tenancy Branch