



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ASHURWIN HOLDINGS LTD. and ROYAL PROVIDENCE
MANAGEMENT INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL
 MNSD

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”). The matter was set for a conference call.

The Landlords’ Application for Dispute Resolution was made on November 14, 2019. The Landlords applied for a monetary order for compensation for damage caused by the tenant, their pets or guests to the unit, site or property, for permission to retain the security deposit and to recover their filing fee. The Tenant’s Application for Dispute Resolution was made on December 3, 2019. The Tenant applied for the return of their security deposit.

The Tenant and the Tenant’s Girlfriend (the “Tenant”) attended the hearing and were each affirmed to be truthful in their testimony. As the Landlords did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. As the Landlords are also applicants in this hearing, I find that the Landlords had been duly notified of the Notice of Hearing in accordance with the *Act*.

The Tenant was provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

This hearing was scheduled for a teleconference hearing on this date.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. Rule 7.3 of the Rules of Procedure stipulates that an Arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

I called into the hearing, and the line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the Tenant.

Therefore, as the Landlords did not attend the hearing by 1:40 p.m. and the Tenant appeared and was ready to proceed, I find that the Landlords' Application for Dispute Resolution has been abandoned. Consequently, I dismiss the Landlords' application in its entirety without leave to reapply.

I will proceed in this hearing on the remaining matter before me, the Tenant's Application for Dispute Resolution, for the recovery of their security deposit.

Issue to be Decided

- Is the Tenant entitled to the return of their security deposit?

Background and Evidence

The Tenant testified that the tenancy began on July 1, 2018, as a one-year fixed-term tenancy. Rent in the amount of \$1,400.00 was to be paid by the first day of each month and the Landlord had been given a \$700.00 security deposit for this tenancy.

The Tenant testified that they ended the tenancy and moved out of the rental on November 4, 2019. The Tenant testified that the Landlord refused to conduct the move-out inspection with them, even though they had requested to conduct the move-out inspection several times.

The Tenant testified that they provided the forwarding address for this tenancy to the Landlord on November 7, 2019, by Canada Post registered mail. The Tenant also testified that the Landlord has not returned the deposit to them as of the date of this hearing.

Analysis

Based on the above, testimony and evidence, and on a balance of probabilities, I find as follows:

Section 38(1) of the *Act* gives the landlord 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposit or repay the security deposit to the tenant.

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.

I accept the undisputed testimony of the Tenant, and find that this tenancy ended on November 5, 2019, the date the Tenant moved out of the rental unit, in accordance with the *Act*. I also accept the undisputed testimony of the Tenant that the Landlord refused to conduct the move-out inspection with the Tenant at the end of this tenancy.

Additionally, I accept the undisputed testimony of the Tenant that they provided their forward address to the Landlord, on November 7, 2019, by registered mail. Accordingly, I find that the Landlord was deemed to have received the Tenant's forward in address five-days latter and that the Landlord had until November 27, 2019, to comply with section 38(1) of the *Act* by either repaying the deposits in full to the Tenant or submitting an Application for Dispute resolution to claim against the deposit.

The Landlords, in this case, submitted the Application for Dispute resolution to claim against the security deposit on November 14, 2019. I find that the Landlord filed their claim against the deposit within the statutory timeline.

However, as the Landlords have abandoned their application, claiming against the security deposit, by not attending these proceedings, I find that pursuant to section 38 of the *Act* the Tenant is entitled to the return of their full security deposit for this tenancy.

Accordingly, I grant the Tenant a monetary order in the amount of \$700.00, for the return of the security deposit for this tenancy.

Conclusion

I dismiss the Landlords' Application for Dispute Resolution without leave to reapply.

I grant the Tenant a Monetary Order in the amount of \$700.00. The Tenant is provided with this Order in the above terms, and the Landlords must be served with this Order as soon as possible. Should the Landlords 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: April 7, 2020

Residential Tenancy Branch