



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FFT

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act). The tenants applied for the return of double their security deposit, plus the recovery of the cost of the filing fee.

The tenants, an agent for the tenants GC (agent) and the landlords attended the teleconference hearing and were affirmed. The hearing process was explained to the parties and opportunity to ask questions was provided. During the hearing the parties provided affirmed testimony and their documentary evidence. A summary of the evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Neither party raised any concerns regarding the service of documentary evidence during the hearing.

Preliminary and Procedural Matter

The parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to both parties. In addition, the tenants confirmed that they understood that a monetary order would be served by email to the tenants only for service on the landlords, if necessary.

Issues to be Decided

- Are the tenants entitled to the return of double their security deposit under the Act?

- Are the tenants entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on April 1, 2017. Monthly rent was \$2,200.00 per month and was due on the first day of each month. The parties confirmed that the tenants paid a security deposit of \$1,100.00 at the start of the tenancy, which the landlords continue to hold.

The landlords confirmed that they did not complete an incoming or outgoing Condition Inspection Report (CIR) in writing during the tenancy, which I will address later in this decision.

The landlords did not dispute that the tenants provided their written forwarding address on their notice to end tenancy. The tenants vacated the rental unit on September 30, 2019. As of the date of this hearing, March 30, 2020, the landlords confirmed they have not filed an application to claim against the tenants' security deposit.

The landlords stated that they sent an e-transfer payment to the tenants on October 15, 2019 in the amount of \$677.80, which the tenants confirmed they did not accept as it was not in the full amount of \$1,100.00 and the tenants did not agree to any deductions from their security deposit. The landlord confirmed that the tenants did not agree in writing to any deductions and the e-transfer eventually expired and is no longer active. Given the above, the landlords continue to hold the tenants \$1,100.00 security deposit as of the date of the hearing.

Analysis

Based on the documentary evidence presented and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;

2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the landlords. Once that has been established, the tenants must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the tenants did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Having considered the documentary evidence and testimony, sections 38(1) and 38(6) of the Act apply and state:

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.**

- (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.**

[Emphasis added]

Given the above, I find the landlords failed to obtain any permission in writing from the tenants to support that the tenants consented to any deduction from their \$1,100.00 security deposit. In addition, I find the landlords failed to either claim against the tenants' security deposit or return the full security deposit of \$1,100.00 within 15 days of receiving the tenants' written forwarding address. Therefore, as the landlords confirmed that the tenants provided their written forwarding address, I find the landlords breached section 38(1) of the Act and I find the tenants are entitled to the return of double the security deposit of \$1,100.00 for a total of **\$2,200.00**. I note that the security deposit has accrued \$0.00 in interest since the start of the tenancy. Based on the above, I find the tenants have met the burden of proof.

As the tenants paid a filing fee of \$100.00 and their application was successful, I grant the tenants **\$100.00** pursuant to section 72 of the Act for the full recovery of the filing fee.

Monetary Order – I find that the tenants have established a total monetary claim in the amount of \$2,300.00, comprised of \$2,200.00 for double the security deposit, plus the \$100.00 filing fee. I grant the tenants a monetary order pursuant to section 67 of the Act in the amount of **\$2,300.00**.

I caution the landlord not to breach section 38(1) of Act in the future.

In addition, sections 23 and 35 of the Act states:

Condition inspection: start of tenancy or new pet

- 23(1)** The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.
- (2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if
 - (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
 - (b) a previous inspection was not completed under subsection (1).
- (3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (4) The landlord must complete a condition inspection report in accordance with the regulations.

(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(6) The landlord must make the inspection and complete and sign the report without the tenant if

- (a) the landlord has complied with subsection (3), and
- (b) the tenant does not participate on either occasion.

Consequences for tenant and landlord if report requirements not met

36(1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

- (a) the landlord complied with section 35 (2) *[2 opportunities for inspection]*, and
- (b) the tenant has not participated on either occasion.

(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

- (a) does not comply with section 35 (2) *[2 opportunities for inspection]*,
- (b) having complied with section 35 (2), does not participate on either occasion, or
- (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Based on the above, as the landlords confirmed that they did not complete a CIR in writing at the start or the end of the tenancy, **I caution** the landlords not to breach sections 23 and 35 in the future and to ensure that a CIR is completed at the start and at the end of all future tenancies.

Conclusion

The tenants' application is fully successful.

The tenants have established a total monetary claim of \$2,300.00 as indicated above. I caution the landlords to comply with sections 23, 35, and 38(1) of the Act in the future.

This decision will be emailed to both parties. The monetary order will be emailed to the tenants only for service on the landlords. This order must be served on the landlords and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 1, 2020

Residential Tenancy Branch