



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

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

- authorization to obtain a return of double the amount of the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two tenants, tenant BL ("tenant") and "tenant JG," and the two landlords, landlord SL ("landlord") and "landlord PP" attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package and the tenant confirmed receipt of the landlords' evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlords were duly served with the tenants' application and the tenants were duly served with the landlords' evidence package.

The landlord stated that landlord PP did not receive a copy of the tenants' application. However, both landlords confirmed that they were ready to proceed with this hearing, as the landlord received the tenants' application and had a chance to review and respond to it.

Both parties confirmed that they were ready to proceed with the hearing and had no objections.

Issues to be Decided

Are the tenants entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on October 1, 2017 and ended on September 30, 2019. Monthly rent in the amount of \$2,054.00 was payable on the first day of each month. One-third of the rental property's hydro and gas utilities were payable in addition to rent. A security deposit of \$987.50 was paid by the tenants. The landlords returned \$265.11 of the security deposit to the tenants in person on October 28, 2019. The landlords retained \$722.39 from the security deposit. Three written tenancy agreements were signed between the parties. The rental property is a house, where the tenants occupy the upper floor. The landlords had written permission to keep \$30.00 for a broken refrigerator door and hydro and gas utilities with no specified amount. The landlords did not file an application for dispute resolution to retain any amount from the tenants' security deposit. Move-in and move-out condition inspection reports were completed for this tenancy. The tenants provided one written forwarding address to the landlords by way of the move-out condition inspection report on September 30, 2019.

The tenants seek a return of double the amount of their security deposit of \$987.50, totalling \$1,975.00. They said that they only owe \$302.86 for unpaid gas and hydro utilities, not the \$692.39 claimed by the landlords. They claimed that they only owe utilities from May 11 to September 30, 2019 because they believed it was only for the final utility bills. They maintained that the landlords failed to notify them of outstanding utilities dating back to April 2018 and the landlords only attempted to collect it at the end of the tenancy when they had to return the deposit to the tenants. The tenants confirmed that they did not keep proper records of what was owed and paid but they paid previous utility bills to the landlords. They explained that they did not agree to October 28, 2019 as a return date for their security deposit, but the landlords would not

answer their emails asking when the deposit would be returned, so they had to wait. They stated that when they asked the landlords about their deposit by email on October 22, 2019, it was already past the 15-day deadline to return the deposit, so they were not purposely waiting for the 15 days to pass. They agreed that they wanted to know the amount of the utilities owed to the landlords but did not ask for copies of the utility bills.

The landlords dispute the tenants' application. They claimed that they offered to return the tenants' security deposit with an estimated utilities amount, but the tenant refused and said she wanted the exact amount with a copy of the utility bills. They confirmed that the tenant agreed to the October 28, 2019 date for the return of the security deposit in person. They denied receiving the emails from the tenants, inquiring about the security deposit. They stated that the tenants did not provide any evidence to prove they paid the utility bills. They said that the tenants did not pay \$692.39 for hydro and gas utilities, provided the bills to confirm same, and explained that they did not chase the tenants for the utility bills from April 2018 because they were smaller amounts.

Analysis

Section 38 of the *Act* requires the landlords to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposit. However, this provision does not apply if the landlords have obtained the tenants' written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlords, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings on a balance of probabilities. The tenancy ended on September 30, 2019 and the written forwarding address was provided by the tenants to the landlords on that date. The landlords did not return the full deposit or make an application for dispute resolution to claim against the deposit.

Both parties agreed that the tenants gave the landlords written permission to retain \$30.00 for the broken refrigerator door from their deposit. I order the landlords to retain \$30.00 from the tenants' security deposit.

Both parties agreed that the tenants gave the landlords written permission to retain hydro and gas utilities from their deposit. No amount or time period for the utility bills was specified in the move-out condition inspection report. I find that the tenants owe the landlords \$692.39 in unpaid gas and hydro utilities for their tenancy. Although the landlords did not continuously pursue the tenants for these bills, they were still owed, regardless of how far back the bills went. The tenants failed to provide documentary evidence to show that they paid the above bills. The tenants owe 1/3 of the total rental property utilities in addition to their monthly rent, as agreed by both parties. The tenants were calculating the owed utility amounts during the hearing, changing their number from \$131.41 to \$302.86, claiming that they only owe amounts from May to September 2019, rather than prior to May 2019. I find that the tenants gave the landlords written permission to retain \$692.39 for gas and hydro utilities from the security deposit and the tenants were given all the utility bills and the final accounting on October 28, 2019. I order the landlords to retain \$692.39 from the tenants' security deposit.

Although the landlords returned the remainder of the deposit of \$265.11 to the tenants on October 28, 2019, which is more than 15 days after September 30, 2019, I find that the tenants agreed to meet the landlords in person on October 28, 2019. I find that although the tenants may have inquired about the deposit, the tenants delayed the process until October 28, 2019 to meet in person in order to wait for the utility bills and determine the final amount owed. I accept the landlords' evidence that they offered to estimate the utilities amount owing and return the remainder of the tenants' deposit, but the tenants refused and wanted an exact accounting, delaying the process. This is because the parties did not specify the amount or time period of the utilities on the move-out condition inspection report. Therefore, I find that the tenants are not entitled to double the value of their security deposit from the landlords.

Accordingly, I find that the tenants are only entitled to the return of their original security deposit of \$987.50, minus the \$722.39 portion already retained by the landlords, leaving a balance of \$265.11, that was already returned to the tenants by the landlords. There is no interest payable on the deposit during the period of this tenancy.

As the tenants were unsuccessful in this application, I find that they are not entitled to recover the \$100.00 filing fee from the landlords.

The tenants' entire application is dismissed without leave to reapply.

Conclusion

I order the landlords to retain \$722.39 from the tenants' security deposit of \$987.50.

The tenants' entire 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: April 06, 2020

Residential Tenancy Branch