



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing was held, by teleconference, on April 7, 2020. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- A monetary order for the return of the security deposit

Both Tenants attended the hearing. However, the Landlords did not. The Tenants stated that they sent the Notice of Hearing, evidence, and the application package to each of the Landlords by registered mail on November 22, 2019. The Tenant provided tracking information to prove service. The Tenants sent it to the address for service listed on the tenancy agreement, as this was the latest address the Tenants had for the Landlords. Pursuant to section 90 of the Act, I find the Landlords are deemed to have received these packages 5 days after they were mailed, on November 27, 2019.

The Tenants were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence 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.

Issue(s) to be Decided

1. Are the Tenants entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?

Background and Evidence

The Tenants stated that the tenancy ended at the end of October 2019, which is when they moved out and returned the keys. The Tenants acknowledge that they gave their written notice to end tenancy late (less than 30 days prior to vacating). The Tenants gave their notice on October 5, 2019, and in that letter confirmed that they would move out by the end of that month. The Tenants stated that monthly rent was due on the first of each month and the Landlord collected a security deposit of \$850.00 at the start of the tenancy, several years ago.

The Tenants stated that they often communicated with the Landlords by email, and so towards then end of the tenancy, on October 28, 2019, they sent their new forwarding address to the Landlords by email. The Tenants provided a copy of this email chain into evidence which shows that the Landlord received and responded to the Tenants' email about their forwarding address. The Landlords responded on November 3, 2019, and indicated they were going to be deducting some expenses from the deposit.

After making deductions, without the Tenants consent, the Landlords returned \$475.00 on November 19, 2019. The Tenants did not authorize any of the deductions, and want the return of the deposit.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

I note that email is not an approved method of service under the *Act*, but in this case, the email chain provided into evidence confirms that the Landlord received and responded to the Tenants forwarding address by email on November 3, 2019. I am satisfied the Landlord received this email and knew what it was about. As this is the day

the Landlord's responded, and stated they were going to be keeping some of the deposit, I find this is the day they received the Tenants' forwarding address in writing.

Since the tenancy had already ended by the time the Landlords had received the Tenants' forwarding address in writing, I find the Landlords had 15 days from the receipt of the Tenants' forwarding address in writing (which was November 3, 2019, as stated above), to either repay the security deposit, in full, to the Tenants or make a claim against it by filing an application for dispute resolution. There is no evidence the Landlords filed an application against the deposit, and there is no evidence they had any agreement with the Tenant with respect to what deductions were acceptable from the deposit.

The Landlords returned \$475.00 but I note the Landlords and the Tenants did not mutually agree on these amounts and it appears this deduction was at the Landlord's discretion. The Landlord should have filed an application against the deposit for permission to retain the deposit. However, the Landlords did not file an application, nor did they return the deposit, in full. As such, I find the Landlords breached section 38(1) of the Act.

Accordingly, I find the Tenants are entitled to recover double the amount of the initial security deposit held by the Landlord ($2 \times \$850.00 = \$1,700.00$) less the amount already returned (\$475.00) pursuant to section 38(6) of the Act.

Pursuant to section 72 of the Act, and given the Tenants' were successful in their application, I award them recovery of the filing fee they paid for this application. Accordingly, pursuant to section 67 of the Act, I grant the Tenants a monetary order in the amount of \$1,325.00, which is due to the Landlord's failure to deal with the security deposit in accordance with section 38 of the Act, and \$100.00 in recovery of the filing fee.

Conclusion

I grant the Tenants a monetary order in the amount of \$1,325.00. This order must be served on the Landlords. If the Landlords fail to comply with this order the Tenants may file the order in the Provincial Court (Small Claims) and be 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 07, 2020

Residential Tenancy Branch