



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC 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 9, 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;
- A monetary order for compensation for loss or other money owed; and,
- Recovery of the cost of the filing fee.

Both the Landlord and one of the Tenants attended the hearing and provided testimony. The Landlord acknowledged receipt of the Tenants' evidence package, including the application and Notice of Hearing. The Tenant confirmed receipt of the Landlord's evidence. Neither party took issue with the service of these packages.

Both parties 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?
2. Are the Tenants entitled to compensation for loss or money owed?

Background and Evidence

Both parties agreed that month rent was \$1,500.00 and was due on the first of the month and the Tenants paid a security deposit in the amount of \$750.00, which the Landlord still holds. The parties also confirmed that the tenancy ended at the end of August 2019, the date the Tenants vacated the rental unit.

The Tenants stated that after they paid rent for August 2019, the Landlord served them with a 1 Month Notice to End Tenancy for Cause (the Notice). The Tenants stated that they filed an application to dispute this Notice shortly after they received it, but rather than wait for the hearing, they decided to move out at the end of August because of how strained the relationship was getting with the Landlord. The Tenants stated that they were unhappy with how inattentive the Landlord was with the rental unit.

The Tenants stated they provided their forwarding address as part of their dispute resolution proceeding for their hearing in the fall of 2019 (to cancel the Notice). The Tenants stated that they did not provide a separate forwarding address in writing, outside of that dispute resolution package. The Tenants also stated the Landlord should know their forwarding address because it is listed on the application and Notice of Dispute Resolution for this hearing as well. The Landlord stated she never even got the last Notice of Hearing for the fall of 2019, nor did she ever get anything in writing from the Tenants stating their forwarding address.

The Tenants stated they are seeking two items on this application. The first is double their security deposit, because the Landlord never returned their deposit. The second item is \$1,500.00 for being served an eviction notice without proper cause.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. In this case, that burden rests with the Tenants.

First, I turn to the issue regarding the security deposit.

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.

In this case, I find the Tenants did not properly provide their forwarding address to the Landlord. I note the Tenants said their address was listed on this application package they served to the Landlord. However, I do not find this is sufficient to satisfy the requirement that they provide their forwarding address in writing to request the return of the security deposit.

Further, they also stated they provided their forwarding address via their previous dispute resolution proceeding from the fall of 2019. However, for the same reason, it is not sufficient to provide a forwarding address in writing for the purposes of the return of the security deposit by serving the Landlord with a Notice of Dispute resolution that merely contains the address as part of an overall package of evidence. Further, the Landlord denies ever getting this package, and the Tenants failed to provide any proof of service for that package.

The Tenants should provide a *separate* written letter to the Landlord stating what their forwarding address is, explicitly, and they must ask for the return of their deposit. This must happen prior to filing an application for the return of the deposit, or double the deposit.

I find it important to note the following portion of the Act:

Landlord may retain deposits if forwarding address not provided

39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing **within one year after the end of the tenancy**,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

The Tenants remain at liberty to provide their forwarding address **in writing** (and not by way of an application for dispute resolution) to the Landlord, should they wish to obtain the deposit back. However, since the tenancy ended on August 31, 2019, the Tenants should keep in mind the time limits for providing the forwarding address, as specified above, and the Landlord should keep in mind the time limits prescribed under section 38(1) of the *Act*, should she be provided with the Tenants' forwarding address.

Since the Tenants have not sufficiently demonstrated that they provided their forwarding address in writing, I dismiss their application for the return of their deposit (or double), with leave to reapply, should they decide to serve the Landlord with their forwarding address, properly.

Next, I turn to the Tenants' request to obtain compensation based on the Notice they received "without cause". I accept that the Tenants were served with a Notice in late July 2019. I note they filed an application to dispute the Notice. However, they moved out, rather than dispute the Notice and attempt to continue the tenancy. I note the Tenants were not required to move out, given they filed an application to dispute the Notice. If they felt the Notice was without cause, then they should have attended the hearing, and disputed the Notice, prior to moving out.

Since they moved out before they were legally required to, I find they did this voluntarily. I do not find there is sufficient evidence that the Tenants should be entitled to any compensation. The Tenants have not sufficiently demonstrated how the Landlord breached the Act, the Tenancy Agreement or any of the rules such that they would be entitled to any compensation for getting a Notice to End Tenancy for Cause. I dismiss the Tenants' claim for compensation, due to being served a notice "without cause". This part of the Tenants application is dismissed without leave.

Since the Tenants were not successful with their application, I decline to award the recovery of the filing fee.

Conclusion

The Tenants' application for return of the security deposit has been dismissed, with leave to reapply.

The Tenants' application for compensation due to receiving a Notice 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 09, 2020

Residential Tenancy Branch