



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. A participatory hearing was held, via teleconference, on April 24, 2020. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- An order that the Landlord return all or part of the security deposit or pet damage deposit

One of the Tenants and both of the Landlords attended the hearing. All parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The Landlord confirmed receipt of the Tenants' application and evidence package. The Tenant stated she received the Landlord's evidence package but she received it late because it was sent to the neighbours unit. During the hearing, it was discovered that the Tenant failed to put her unit number on her address for service (on the Notice of Dispute Resolution Proceeding). As such, when the Landlord sent the evidence to the address, it took extra time for the Tenant to receive it. I note the Landlord sent this package by registered mail on April 14, 2020, and provided tracking information to prove this. Pursuant to section 88 and 90 of the Act, I find the Tenant is deemed to have received the Landlords' evidence 5 days after it was mailed, April 19, 2020.

Residential Tenancy Branch Rule of Procedure 3.15 state that the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than *seven* days before the hearing. I find the Landlords' evidence was served late, and it is not clear why it was sent as late as it was (The Landlords failed to explain). As such, I find the Landlords' evidence is not admissible. Further, the Tenants' final

evidence package which was uploaded a couple of days ago is also late, and will not be considered. The only admissible documentary evidence for this hearing is the evidence sent by the Tenant with her initial application package to the Landlord.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is 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 parties confirmed that the Tenants paid a security deposit of \$800.00 and that the Landlord still holds this amount. The parties also confirmed that the Tenants left the rental on October 29, 2019. The Tenants provided a copy of the forwarding address in writing that they gave to the Landlords on October 29, 2019, in person. The Landlords confirmed that this is the day they received it.

The Landlords stated that they had discussions with the Tenants about keeping the security deposit, until all of the utility bills were received, at which point they would deduct the outstanding bills, and return the rest of the deposit. The Landlords state that this was a verbal agreement with the Tenants but the Tenants state they never agreed to this. The Tenants felt it was necessary to handle the utilities separately.

The Landlords sent the Tenants \$426.22 around January 21, 2020, but the Tenants rejected the payment because it was not enough. The Landlords also sent the Tenants another amount of \$800.00 around February 14, 2020, but again, the Tenants rejected this payment because the Tenant, at this point, felt entitled to some additional costs they had incurred.

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.

In this case, both parties confirmed that the Tenants moved out of the rental unit on October 29, 2019, which I find reflects the end of the tenancy. The Landlords confirmed that they received the Tenants' forwarding address in writing on October 29, 2019.

I note the parties never made any agreements in writing with respect to how to handle the deposit. At this point, there is a disputed verbal agreement about keeping the deposit until all utility bills were accounted for. However, since this is not in writing, it is not enforceable or helpful in this case.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from receipt of the forwarding address in writing (until November 13, 2019) to either repay the security deposit (in full) to the Tenants or make a claim against it by filing an application for dispute resolution. The Landlords did neither and I find the Landlords breached section 38(1) of the *Act*. The Landlords waited until January 2020 to start sending some of the money back to the Tenants. However, by this point, they had already breached section 38(1) of the *Act*.

Accordingly, as per section 38(6)(b) of the *Act*, I find the Tenants are entitled to recover double the amount of the security deposit (\$800.00 x 2). Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenants were successful in this hearing, I also order the Landlord to repay the \$100.00 fee the Tenants paid to make the application for dispute resolution.

In summary, I issued the Tenants a monetary order for \$1,700.00 based on the Landlord's failure to deal with the security deposit in accordance with section 38 of the *Act*.

Conclusion

I grant the Tenants a monetary order in the amount of **\$1,700.00**. 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 27, 2020

Residential Tenancy Branch