



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mission Group Rentals
and [tenant name suppressed to protect
privacy]

DECISION

Dispute Codes

MNSD, FFT, MNDCT

Introduction

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

- authorization to obtain a return of all or a portion of the security and pet damage deposit pursuant to section 38;
- authorization to recover the filing fee from the landlord pursuant to section 72; and
- a monetary award for damages and loss pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent (the "landlord").

As both parties were present service was confirmed. The parties each testified that they had been served with the other's materials. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to a return of all or part of the security and pet damage deposit?

Are the tenants entitled to recover their filing fee from the landlord?

Are the tenants entitled to a monetary award as claimed?

Background and Evidence

The parties agree on the following facts. This fixed-term tenancy began in June 2019 and ended in October 2019. Monthly rent was \$1750.00 payable on the first of each month. A security deposit of \$875.00 and pet damage deposit of \$875.00 were paid at the start of the tenancy. The parties prepared a move-out inspection report dated October 24, 2019.

The parties agree that the tenants did not provide a physical forwarding address in writing on the move-out inspection report or in subsequent correspondence. The tenants did provide their email address, phone number and banking information to allow a transfer of funds. The parties agree that the landlord's agent at the time of the move-out inspection stated that the information provided by the tenants was sufficient. The tenant testified that the address for service of their present application is their forwarding address.

The landlord returned the amount of \$1,437.52 to the tenants by an electronic fund transfer made on December 13, 2019. The landlord deducted the amount of \$312.48 from the deposits for utility arrears.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit.

The parties agree that the tenants have not provided a physical forwarding address in writing. I find that while there has been some email correspondence between the parties wherein the tenants have provided banking information for electronic funds transfer no forwarding address has yet been provided.

I find that the provision of banking information is not a substitute for a proper forwarding address. While I accept that the landlord's agent informed the tenants that their provision of banking information was sufficient, in accordance with section 5 of the *Act*, this *Act* cannot be avoided and any attempts to contract out of this *Act* or regulations are of no effect.

In accordance with section 38 of the Act, the landlord's obligation to return the deposits or file an application for authorization to retain all or a portion of the deposits has not commenced as the tenants have not provided a proper forwarding address in a manner consistent with the Act. I therefore find that the tenants' application is premature and I dismiss the tenants' application in its entirety with leave to reapply.

The tenants testified in the hearing that the address for service of this application for dispute resolution is the tenants' correct and current forwarding address. Therefore, in accordance with section 71(2)(b) of the Act, I find that the landlord has been sufficiently served with the tenants' forwarding address as of the date of the hearing, May 5, 2020.

I find that the landlord has now been served with the tenants' forwarding address as of the date of the hearing, May 5, 2020 and they have 15 days from this date to either return the balance of the deposits not already returned or file an application for authorization to retain those amounts in accordance with section 38 of the Act.

Conclusion

The tenants' application is dismissed in its entirety with 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: May 5, 2020

Residential Tenancy Branch