



Dispute Resolution Services

Page: 1

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 remainder of the tenants' security and pet damage deposits (collectively "deposits"), pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's agent ("landlord") and the two tenants, "male tenant" and female tenant ("tenant") 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 that she had permission to represent the landlord named in this application at this hearing. The tenant confirmed that she had permission to represent the male tenant at this hearing (collectively "tenants"). This hearing lasted approximately 30 minutes.

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

Issues to be Decided

Are the tenants entitled to obtain a return of double the value of their deposits?

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 April 25, 2018. Monthly rent in the amount of \$2,500.00 was payable on the first day of each month. A security deposit of \$1,250.00 and a pet damage deposit of \$1,250.00 were paid by the tenants and the landlord returned \$683.50 to the tenants on July 8, 2019 and \$1,260.00 to the tenants on July 18, 2019. A written tenancy agreement was signed by both parties. Move-in and move-out condition inspection reports were completed for this tenancy. The landlord received a written forwarding address from the tenants by way of text message on July 2, 2019. The landlord had written permission to retain \$556.50 from the tenants' deposits. The landlords did not file an application for dispute resolution to retain any amount from the tenants' deposits.

The landlord said that the tenancy ended on July 1, 2019, while the tenant said that it was on June 30, 2019.

The tenants seek \$1,260.00, which is double the value of the deposits, minus the portions returned, plus the \$100.00 filing fee. They said that the remaining \$1,260.00 owed to the tenants, after the deduction of \$556.50, was given to them on July 18, 2019, which is not within 15 days of July 2, 2019, when they provided their forwarding address to the landlord.

The landlord disputes the tenants' application, claiming that the tenants caused additional damages beyond what they agreed to pay of \$556.50. She said that the tenants failed to pay a monetary order pursuant to a previous Residential Tenancy Branch ("RTB") hearing between these parties on January 7, 2020. The file number for that hearing appears on the front page of this decision.

Both parties agreed that the previous RTB hearing ordered the tenants to pay \$1,360.00 to the landlord for damages related to a strata issue, which was not related to any claims against the tenants' deposits.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenants' deposits or file for dispute resolution for authorization to retain the deposits, 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 landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposits. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the deposits 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 landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings based on the testimony of both parties. The tenancy ended by July 1, 2019. The tenants provided a written forwarding address by way of a text message on July 2, 2019, which was received by the landlord on the same date. Although text message is not a valid service method under section 88 of the *Act*, I find that the landlord received the message, so the landlord was sufficiently served with it in accordance with section 71(2)(c) of the *Act*.

The tenants gave the landlord written permission to retain \$556.50 from the deposits. The landlords returned \$683.50 to the tenants within 15 days, on July 8, 2019. However, the landlords did not return the remaining \$1,260.00 to the tenants within 15 days or make an application for dispute resolution to claim against it.

In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenants are entitled to receive double the value of \$1,260.00, totaling \$2,520.00, minus the \$1,260.00 portion already returned to them, for a balance owing of \$1,260.00. There is no interest payable on the deposits during the period of this tenancy.

As the tenants were successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of \$1,360.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: May 19, 2020

Residential Tenancy Branch