Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDB-DR

Introduction

The tenants filed an Application for Dispute Resolution (the "Application") on May 6, 2020 seeking an Order granting a refund of the security deposit.

This participatory hearing was convened after the issuance of a May 13, 2020 Interim Decision of an Adjudicator. The Adjudicator determined that the tenants' application could not be considered by way of the Residential Tenancy Branch's direct request proceedings, as they originally requested. The Adjudicator reconvened the tenants' application to a participatory hearing as they were not satisfied with a discrepancy in the forwarding address of the tenants.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "*Act*") on June 12, 2020. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

Both parties confirmed receipt of each other's evidence prepared for this hearing in advance. The tenant in attendance had the opportunity to review evidence in the hearing with the assistance of their agent. Both parties fully addressed the information and submissions in the hearing.

Issue(s) to be Decided

Are the tenants entitled to an Order granting a refund of the security deposit pursuant to section 38(1)(c) of the *Act*?

Background and Evidence

I have reviewed all evidence and written submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The tenancy agreement between the parties shows the tenancy started on November 1, 2019. The monthly rent was $1,950.00 per month payable on the 1st of each month. The tenants paid a security deposit amount of $975.00 and a pet damage deposit amount of $975.00 on October 20, 2019. The parties signed the agreement on October 31, 2019.

The tenants provided a written notice to the landlord on January 31, 2020 that they wished to end the tenancy. The last day of the tenancy as specified is February 29, 2020. This letter contained a forwarding address of one of the tenants. Both tenants signed this letter.

A second letter to the landlord appears in the evidence, dated February 29, 2020. This gives a second forwarding address and again requests the combined amount of the deposits, which is $1,950.00. The address differs from that provided in the initial end-of-tenancy letter. Both tenants also signed this letter.

A Condition Inspection Report document is in the evidence. The document shows the move-in inspection meeting date of November 1, 2019. The document shows the move-out inspection date of March 1, 2019; however, in the hearing I verified that the correct date is March 1, 2020.

In the hearing, the tenant in attendance stated the first address was that of their parent, provided in their first notice of ending the tenancy, for an immediate contact. They provided the second address when they secured a future address closer to the end of tenancy.

The total amount of deposits is $1,950.00. The tenants present that their claimed amount for $800.00 is what remains after the landlord forwarded $1,150.00 to them. The tenant in the hearing stated they never approved the landlord retaining $800.00 – this was not verified in writing. They stated they “never approved in writing or okay’ed” for the landlord to retain this amount.

The landlord verified that they returned $1,150.00 to the tenants. They met with the tenants on March 1, and they discussed broken tiles with the tenants who asked the landlord for an estimate.

The landlord consulted with a tile installer who informed them “by text around $800 labour plus tiles cost”. By March 15, 2020, the tenants kept asking for the return of the

deposit, and on that date, they forwarded $1,150.00 to them, retaining $800.00 at that time.

By March 30, 2020, the landlord received a quote from the installer for $1,207.00. They state the tenants still must pay $407.50 for the remainder of the tile estimate. The landlord states they applied for dispute resolution on May 12th, to claim the full amount of $1,207.50 for replacement tiles. They subsequently did not pay the application fee and that hearing was canceled.

They also stated they withheld $800.00 and the tenants "didn't say anything" and "[the tenants] never asked for $800.00 to return." They state the tenant not in attendance in the hearing was aware of the amount, giving them a "rough labour cost" by text messages.

Analysis

The *Act* section 38(1) states that within 15 days after the later of the date the tenancy ends, or the date the landlord receives the tenant's forwarding address in writing, the landlord must repay any security or pet damage deposit to the tenant or make an Application for Dispute Resolution for a claim against any deposit.

Further, section 38(6) of the *Act* provides that if a landlord does not comply with subsection (1), a landlord must pay the tenant double the amount of the security and pet damage deposit.

From the evidence I can establish as fact that the tenants gave the forwarding address to the landlord at the time of the move-out meeting, when they signed the Condition Inspection Report. This occurred on March 1, 2020.

With 15 days, the landlord did not apply for a claim against the deposit. They did not present clear evidence that they had subsequent discussions with one of the tenants that stand as a clear agreement from them that they authorized them to retain $800.00 of the security deposit. The landlord did not present that this was written authorization from the tenants to them.

The landlord presented they had applied for a claim against the security deposit; however, they have since canceled that application process. I find this stands as evidence they did not claim against the security deposit within the required 15-day time period as specified in the *Act*. This constitutes a breach of section 38(1); therefore, section 38(6) applies and the landlord must pay double the amount of the security deposit.

Conclusion

I order the landlord to pay the tenants the amount of $2,750.00. This is the remainder of double the security deposit and pet deposit amount of $1,950.00, minus the amount of $1,150.00 the landlord previously returned. I grant the tenant a monetary order for this amount. This monetary order may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: June 19, 2020

Residential Tenancy Branch