



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFL

Introduction

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

- a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the tenants served the landlords with their application for dispute resolution via registered mail. I find that the landlords were served in accordance with the *Act*.

Issues to be Decided

1. Are the tenants entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act*?
2. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced

here. The relevant and important aspects of the tenants' and landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on March 1, 2015 and ended on December 20, 2019. Monthly rent in the amount of \$1,975.00 was payable on the first day of each month. A security deposit of \$987.50 and a pet damage deposit of \$493.75 were paid by the tenants to the landlords. A written tenancy agreement was signed by both parties and pages 1,2,3 and 6 were submitted for this application.

Both parties agree that the landlords returned the pet damage deposit on December 22, 2019 and returned \$273.91 of the security deposit on December 22, 2019.

Both parties agree that a joint move in condition inspection and inspection report was completed by the parties on February 28, 2015 and a joint move out condition inspection report was completed by the parties on December 20, 2019. Page 3 of the move out/in condition inspection report was entered into evidence. Both parties signed the move in and out condition inspection report.

Both parties agree that the tenants provided the landlords with their forwarding address on the move out condition inspection report. Both parties agree that the landlords filled out the section Z(2) of the move out condition inspection report which stated that the tenants authorized the landlords to retain their security deposit. Both parties agree that the tenants verbally disagreed with this statement and refused to sign their agreement on the move out condition inspection report. Section Z(2) of the move out condition inspection report is not signed by the tenants.

The landlords testified that they thought they filed an application for dispute resolution for authorization to retain the tenants' security deposit in response to the tenants' application. The Residential Tenancy Branch has no record of a cross application filed in relation to this file; however, it appears that the landlords uploaded their application for dispute resolution as a piece of evidence on March 17, 2020. I informed the landlords that I would not hear their application today as they did not properly file it with the Residential Tenancy Branch, pay the application fee or serve the tenants with the required documents. I informed both parties that they each have two years from the date the tenancy ended to file an application for dispute resolution.

The landlords testified that they retained a portion of the tenants' security deposit due to the condition of the subject rental property at the end of the tenancy.

Analysis

Section 38 of the Act requires the landlords to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, 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 landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the Act, equivalent to double the value of the security deposit.

However, this provision does not apply if the landlords have obtained the tenants' written authorization to retain all or a portion of the security deposit 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 find that the landlords did not have written authorization from the tenants to retain any portion of their security deposit.

I find that the landlords did not return all of the tenants' security deposit within 15 days of the end of the tenancy and the tenants' provision of their forwarding address in writing.

The landlords did not file an application for dispute resolution seeking authorization to retain any portion of the tenants' security deposit. Even if the landlords filed an application with the Residential Tenancy Branch on the same day they uploaded their application (March 17, 2020) such an application would have been made more than 15 days from the end of the tenancy and the tenants' provision of their forwarding address in writing. In accordance with section 38 of the Act, I find that the tenants are entitled to double their security deposit as follows:

$$\begin{aligned} &\$987.50 \text{ (security deposit)} * 2 \text{ (doubling provision)} = \$1,975.00 - \$273.91 \\ &\text{(amount of security deposit the landlords returned)} = \mathbf{\$1,701.09} \end{aligned}$$

As the tenants were successful in their application for dispute resolution, the tenants are entitled to recover the \$100.00 filing fee from the landlords, pursuant to section 72 of the Act.

Conclusion

I issue a Monetary Order to the tenants in the amount of \$1,801.09

The tenants are provided with this Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords 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: June 16, 2020

Residential Tenancy Branch