



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution was made on April 3, 2020 (the "Application"). 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; and
- an order granting recovery of the filing fee.

The Tenants and the Landlord attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to an order that the Landlord return all or part of the security deposit, pursuant to section 38 of the *Act*?
2. Are the Tenants entitled to an order granting recovery of the filing fee, pursuant to section 72 of the *Act*?

Background and Evidence

The parties testified and agreed that the tenancy began on October 1, 2016. Near the end of the tenancy, the Tenants were required to pay rent in the amount of \$2,050.00 to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$975.00. The tenancy ended on February 29, 2020.

The Tenants stated that they vacated the rental unit at noon on February 29, 2020 and had assumed that the Landlord would attend at that time to collect the keys. The Tenants stated that no one appeared for the Landlord, therefore, the Tenants left their forwarding address on the counter of the rental unit.

The Tenants stated that they followed up with a letter which they sent on March 7, 2020 to the Landlord requesting the return of their security deposit. The Tenants stated that they received a cheque from the Landlord on March 11, 2020 in the amount \$975.00. The Tenants stated that they deposited the cheque, however, it was returned as NSF.

The Tenants stated that they received a replacement cheque from the Landlord on March 23, 2020 in the amount of \$975.00. The Tenants stated that they have not yet cashed the cheque as they are concerned the cheque will be once again returned as NSF. The Tenants confirmed that they are still in possession of the cheque.

The Landlord stated that the parties had not yet scheduled a move out inspection, therefore, she did not attend the rental unit on the last day of the tenancy. The Landlord stated that she did not receive the Tenants' forwarding address until March 9, 2020 after receiving the letter from the Tenants requesting the return of their deposit. The Landlord acknowledged that the first cheque was NSF as she had not yet deposited her paycheck. The Landlord stated that she reissued a new cheque and has had sufficient funds in her account in case the Tenants choose to deposit the cheque for the return of their security deposit. The Landlord confirmed that the Tenants have not yet deposited the cheque.

Analysis

Based on the documentary evidence before me for consideration 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 deposits or make a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to comply with section 38(1) of the *Act*, and does not have authority under sections 38(3) or 38(4) of the *Act* to withhold any deposits, section 38(6) stipulates that a tenant is entitled to receive double the amount of the security deposit. These mandatory provisions are intended to discourage landlords from arbitrarily retaining deposits.

The Tenants stated that they left their forwarding address on the counter on February 29, 2020 on the last day of their tenancy. The Landlord stated that she did not receive the Tenants' forwarding address until March 9, 2020 after receiving a letter from the Tenants requesting their security deposit and providing their forwarding address.

Section 88 of the *Act* stipulates that documents such as evidence must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served; or
- (i) as ordered by an Arbitrator

I find that the Tenants did not serve the Landlord their forwarding address in accordance with Section 88 of the *Act* on February 29, 2020. As such, I accept that the Landlord only learned about the Tenant's forwarding address on March 9, 2020 after

receiving a letter from the Tenants by mail. As such, I find that the Landlord had until March 24, 2020 to return the Tenants' security deposit in full, or make an application to retain it.

I accept that after receiving the Tenants' forwarding address on March 9, 2020, the Landlord sent the Tenants a cheque on March 11, 2020 in the amount of \$975.00, which was returned NSF. I accept that the Landlord sent a replacement cheque to the Tenants which the Tenants confirmed having received on March 23, 2020.

While the Tenants chose not to deposit the replacement cheque in the amount of \$975.00, I find that the Landlord provided the replacement cheque for the full return of the Tenants security deposit to the Tenants in compliance with Section 38 of the Act. As such, I find that the Tenants are not entitled to double the return of their security deposit. The Tenants are at liberty to deposit the cheque that was provided to them on March 23, 2020.

In light of the above, I dismiss the Tenants' Application with leave to reapply should the Landlord's replacement cheque be returned as NSF. Having not been successful, I find that the Tenants are not entitled to the return of the filing fee.

Conclusion

The Tenants' are at liberty to deposit the cheque containing the full return of their security deposit. The Tenants' Application is dismissed with leave to reapply should the cheque be returned as NSF.

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: August 18, 2020

Residential Tenancy Branch