



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL
 MNSDS-DR, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord under the Residential Tenancy Act (the Act), seeking:

- Compensation for monetary loss or other money owed;
- Authorization to retain the Tenants' security deposit; and
- Recovery of the filing fee.

This hearing dealt with a Cross-Application for Dispute Resolution (the Application) that was filed by the Tenants under the Act, seeking:

- The return of their security deposit; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Landlord, the Landlord's spouse, the Tenants, and the Tenants' support person, all of whom provided affirmed testimony. The parties acknowledged service and receipt of the Notice of Hearing and each other's Applications and documentary evidence and raised no concerns regarding service. As a result, the hearing proceeded as scheduled and I accepted the documentary evidence before me for consideration in these matters. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), I refer only to the relevant and determinative facts, evidence and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email address confirmed in the hearing.

Preliminary Matters

During the hearing the Landlord stated that their filing fee had been waived, and as a result, they withdrew their claim for recovery of the filing fee.

Issue(s) to be Decided

Is the Landlord entitled to compensation for monetary loss or other money owed?

Is the Landlord entitled to retain the Tenants' security deposit, and if not, are the Tenants entitled to its return?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The parties agreed in the hearing that a one-year fixed term tenancy agreement was entered into in writing, that the tenancy began April 1, 2019, and that the fixed term was set to end on March 31, 2020. Although the tenancy agreement in the documentary evidence before me states that the end of the fixed-term is March 31, 2019, the parties agreed that this was a clerical error. The tenancy agreement states that after the end of the fixed-term, the tenancy will continue on a month to month basis, that the Tenants are required to give one months notice to end the tenancy if they wish to end the tenancy on or after the end date for the fixed-term, that rent in the amount of \$1,500.00 is due on the first day of each month, and contains a liquidated damages clause of \$750.00. The parties agreed that these are the correct terms entered into and that a \$750.00 security deposit was paid, which the Landlord still holds.

There was no disagreement between the parties that the Tenants gave written notice to end the tenancy effective March 31, 2020, via text message on March 19, 2020, and that move-in and move-out condition inspections and reports were completed in accordance with the Act and regulations.

The Landlord stated that they are seeking the retention of the Tenants' \$750.00 security deposit for payment of liquidated damages as the Tenants failed to give one months notice to end the tenancy as required in the tenancy agreement.

The Tenants acknowledged that they gave only 10 days notice to end the tenancy but stated that they were stuck overseas as a result of the pandemic. The Tenants stated that the Landlord should not be entitled to retain their security deposit as they believe it is for damage to the rental unit only, which was left clean and undamaged at the end of the tenancy. Although the parties were in agreement that attempts were made to reach a mutual agreement to continue the tenancy at a reduced rental rate until the Tenants could return, ultimately an agreement could not be reached, and the tenancy ended on March 31, 2020.

The Tenants stated that they served the Landlord with their forwarding address in writing on April 1, 2020, by having a family member post it to the Landlord's door on April 1, 2020, and in the hearing the Landlord acknowledged receipt on that date.

Analysis

As the parties agreed that condition inspections and reports were completed at the start and the end of the tenancy in compliance with the Act and the regulations, I find that neither party extinguished their rights in relation to the security deposit.

In the hearing the parties agreed that the Landlord received the Tenants' forwarding address in writing on April 1, 2020 and although the Landlord stated that the Tenants' agent agreed that they could retain the security deposit, no evidence was submitted in support of this testimony and the Tenants denied this allegation. As a result, I am not satisfied that any such agreement occurred. As there is no evidence that the Landlord had a right to retain the security deposit under sections 38(3) or 38(4) of the Act, I therefore find that the Landlord was obligated to either return it to the Tenants in full or file a claim against it with the Branch by April 16, 2020, pursuant to section 38(1) of the Act. Branch records indicate that the Landlord's Application seeking retention of the Tenants' security deposit was considered filed on April 15, 2020, and as a result, I find that the Landlord complied with section 38(1) of the Act.

Although the Tenants' stated their belief that security deposits are only for damage, I do not agree. Security deposits are held in trust by landlords for a wide variety of reasons, including but not limited to compensation for damage to the rental unit, and as stated above, I have already found that the Landlord was entitled to withhold the Tenants' security deposit pending the outcome of their Application.

There was no dispute between the parties that the Tenants' did not give proper notice to end the fixed-term tenancy in accordance with the Act or their tenancy agreement. As a result of the above, and pursuant to the terms of the tenancy agreement, I grant the Landlord's claim for \$750.00 in liquidated damages. Pursuant to section 72(2)(b) of the Act, I therefore authorize the Landlord to withhold the Tenants' \$750.00 security deposit in payment of this amount

Based on the above, I therefore dismiss the Tenants' Application for the return of their security deposit and recovery of the filing fee without leave to reapply.

Conclusion

The Landlord is authorized to withhold the Tenants' \$750.00 security deposit for liquidated damages.

The Tenants' Application seeking the return of their security deposit and recovery of the filing fee is dismissed without 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: September 9, 2020

Residential Tenancy Branch