



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

The tenants filed an Application for Dispute Resolution (the “Application”) on July 7, 2020 seeking an Order granting a refund of the security deposit, as well as a recovery of the filing fee for the hearing process.

This participatory hearing was convened after an agent of this office determined the correct information regarding the tenancy was not in place to proceed by a direct request proceeding. The agent informed the tenants of this on August 12, 2020. This generated a Notice of Hearing sent to the Applicant tenants.

The tenants forwarded this information to the landlord, including their prepared evidence. The landlord confirmed delivery of this information via registered mail.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the *Act*) on September 14, 2020. In the conference call hearing I explained the process and provided the parties the opportunity to ask questions.

Although the Application shows two tenants named, one tenant attended and is referred to singularly as “tenant” below. An agent for the landlord attended to speak on behalf of the landlord.

Preliminary Issue

An agent for the landlord attended the hearing. The landlord named by the tenant as Respondent in this hearing did not attend. The agent, on behalf of the landlord, stated the landlord’s request for an adjournment to the hearing. They referred to the September 8, 2020 letter submitted by the landlord wherein they plead for an adjournment due to a family matter

requiring travel. Due to pressing matters, they stated they “cannot concentrate on [their] mind recently.”

I reviewed the matter at hand with the agent who attended on behalf of the landlord. I ensured they would have a chance to present matters to the best of their knowledge in the landlord’s absence.

I am satisfied the landlord’s inability to attend did not prejudice the matters at hand to their detriment. This was based on my evaluation and assessment of the agent’s capability at each stage of the hearing. I asked the agent directly on matters of importance; at each step, the agent provided a clear answer and did not express that the answer to the question was beyond their knowledge.

On this assurance, I find no need to reconvene matters to assess more accurately the position of the landlord. Concerning the issues listed below, I am satisfied on the record, and based on oral testimony, that both parties had the chance to present their case in the clearest manner possible. On this basis, the hearing proceeded, and I provide my decision herein below.

Issue(s) to be Decided

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

Are the tenants entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The tenant and the landlord’s agent in attendance spoke to the terms of the tenancy agreement. Both parties confirmed the agreement was in place for the rental unit leased by the tenants. The tenancy agreement was dated September 15, 2019, and both tenants and the landlord signed on that date. The rent amount was \$1,500.00 “for only two persons”, payable on the last day of each month. The tenancy was for a fixed term ending on June 30, 2020.

The agreement contains the detail: “A Security deposit is 100% of one month rent (\$1500.00.)”

In the hearing, the agent of the landlord confirmed the finer details of the tenancy agreement that was in place.

The tenant at the hearing stated they ended the tenancy with less than one-full-month notice to the landlord. They stated that they told the landlord verbally of their end of tenancy; this was 22 days before the move out date. Their notice to the landlord was also captured in a June 13, 2020 "WeChat" dialogue, and they provided a translation that states: "June 30 of 2020 will be the last date for our rent agreement." The tenant stated they paid for "professional cleaning service" prior to their move out.

The tenant stated that "before I moved in, the landlord promised [they] would return the security deposit within two weeks [of end of tenancy]". For this reason, the tenant did not ask separately for a return of the deposit at the end of the tenancy.

The landlord's agent in attendance reiterated that the landlord had concern with the short notice provided by the tenant, and that the end-of-tenancy notice was given verbally. They raised the concern that the tenant did not clean the unit to satisfactory expectations. The agent also confirmed the landlord did not return the security deposit to the tenant.

The tenants are applying for a return of the security deposit. On their application, they stated: ". . . landlord] didn't return this full amount back to me within the time limit after I deliver him the notice". This is in reference to the end of tenancy, and also when the tenant provided their forwarding address.

The tenants provided a copy of a document signed and dated July 9, 2020. It is a Residential Tenancy Branch form titled 'Tenant's Notice of Forwarding Address for Return of Security and/or Pet Damage Deposit.' This document contains a forwarding address.

They submitted a separate document entitled 'Proof of Service Tenants Forwarding Address for the Return of Security and/or Pet Damage Deposit' wherein they state they provided the forwarding address form to the landlord on July 14, 2020. This was by leaving it "in a mailbox . . . at the address where the person resides. . . "and attaching [it] to the door or other conspicuous place". On page 2, they provided: "Hand or face to face delivering method was rejected by the landlord. Instead, landlord told us to leave the forwarding address in his mailbox." This separate document was signed and dated July 15, 2020.

In the hearing the agent of the landlord confirmed that there was no contact or communication between the tenant and the landlord after the discussion about adequate cleanliness of the unit. They also confirmed the landlord did not return the security deposit to the tenant.

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 tenants 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 tenants double the amount of the security and pet damage deposit.

From the evidence I can establish as fact that the tenants provided their forwarding address to the landlords on July 14, 2020. The evidence for this is form provided by the tenant, and the separate form showing service on that date.

The landlord submitted – via their agent present in the hearing – that the unit was not of adequate cleanliness. There was no statement conveyed that this was a rationale for their withholding the return of the security deposit.

I find the tenant ended the tenancy on June 30, 2020 when they vacated the unit. This was with prior notice to the landlord.

Similarly, occurring after this was the tenants providing their forwarding address on July 14, 2020. Regarding section 38(1), this is the later catalyst, that being “the date the landlord receives the tenant's forwarding address in writing.” By section 90, the document is deemed served on the 3rd day after it was left; here, this is July 17, 2020. The landlord had fifteen days from July 17, 2020 to make a claim against the security deposit.

In this hearing, there is no evidence the landlord made an application for dispute resolution claiming against the security deposit. Therefore, the landlord retaining the security deposit is not in line with the provisions of the *Act*. The landlord was bound by the provisions of section 38(1).

I find as fact that the landlord received the tenant's forwarding address information on July 17, 2020 and did not subsequently make a claim to retain the deposit within the legislated timeframe of 15 days. In sum, I find the landlords retained the deposit after the tenancy ended. When provided with the tenants' address information, the landlords had the opportunity to register a claim to retain that deposit; however, there is no record that they did so.

I find the landlords did not return the deposit to the tenants as the *Act* requires. This constitutes a breach of section 38(1); therefore, section 38(6) applies and the landlords must pay double the amount of the security deposit. This is \$3,000.00.

As the tenant was successful in this application, I find the tenant is entitled to recover the \$100.00 filing fee they paid for this application.

Conclusion

I order the landlord to pay the tenants the amount of \$3,100.00. 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: September 16, 2020

Residential Tenancy Branch