



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution filed on June 7, 2020, under the *Residential Tenancy Act* (the "*Act*"). The Tenants applied for the return of their security deposit, and to recover their filing fee. The matter was set for a conference call.

The Landlord and both the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and the Tenants were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony 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

- Has there been a breach of Section 38 of the *Act* by the Landlord?
- Are the Tenants entitled to the return of their security deposit?
- Are the Tenants entitled to recover the filing fee for this application?

Background and Evidence

The tenancy agreement shows that the tenancy began on August 1, 2019, as a two-year fixed term tenancy, and that rent in the amount of 1,400.00 was due by the first day of each month. The Landlord testified that they collected a \$700.00 security deposit and a \$700.00 pet damage deposit (the "deposits") at the outset of this tenancy.

Both the Landlord and the Tenants agree in their verbal testimony that the tenancy ended on May 31, 2020, the date the Tenants moved out of the rental unit, and provided their forwarding address to the Landlord.

The Tenants testified that as of the date of this hearing the Landlord had not returned their deposits, nor had they received notification that the Landlord had filed a claim against their deposits.

Analysis

Based on the testimony, the documentary evidence before me, and on a balance of probabilities, I find as follows:

I accept the agreed upon verbal testimony of these parties, and I find that this tenancy ended on May 31, 2020, the date the parties agreed the Tenants had moved out of the rental unit and provided their forwarding address to the Landlord.

Section 38(1) of the *Act* gives the landlord 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposit or repay the security deposit to the tenant.

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Accordingly, I find that the Landlord had until June 15, 2019, to comply with section 38(1) of the *Act* by either repaying the deposit in full to the Tenants or submitting an Application for Dispute resolution to claim against the deposit. The Landlord, in this case, did neither.

As a result, the Tenants were within their rights to apply for the return of their security deposit as of June 16, 2020. However, in this case, the Tenants applied on June 7, 2020.

Consequently, I find that the Tenants prematurely submitted their application for these proceedings and did not wait the required 15 days before making their application. Therefore, I must dismiss the Tenants' application with leave to reapply.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants have not been successful in this application, I find that the Tenants are not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the Tenants' Application for Dispute Resolution with leave to reapply; and note that this does not extend any applicable time limits under the legislation for either party.

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: October 1, 2020

Residential Tenancy Branch