



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The "female tenant" did not attend this hearing, which lasted approximately 21 minutes. The male tenant ("tenant") and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant confirmed that he had permission to represent the female tenant at this hearing (collectively "tenants").

The landlord confirmed receipt of the tenants' application for dispute resolution and notice of hearing and the tenant confirmed receipt of the landlord's evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application and notice of hearing and the tenants were duly served with the landlord's evidence.

The landlord stated that he did not receive any evidence from the tenants. The tenant stated that he served his evidence to the landlord, but he did not remember whether it was in July or August 2020. He claimed that he did not care about any evidence, except for his security deposit receipt. I notified the tenant that I could not consider the tenants' evidence at this hearing or in my decision because he did not provide a date of service and the landlord did not receive the evidence.

Both parties confirmed that they were ready to proceed with this hearing.

Issues to be Decided

Are the tenants entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the Act?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of both parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on February 1, 2019. Monthly rent in the amount of \$1,600.00 was payable on the first day of each month. A security deposit of \$800.00 was paid by the tenants and the landlord continues to retain this deposit. No written tenancy agreement was signed by the parties. No move-in or move-out condition inspection reports were completed for this tenancy. The landlord did not file an application for dispute resolution to retain any amount from the tenants' security deposit. The tenants provided a written forwarding address to the landlord around July 10 or 11, 2019, which the landlord received.

The landlord stated that this tenancy ended on July 9, 2019, while the tenant claimed that it was July 7, 2019. The landlord stated that he had written permission from the tenants, by way of a text message on June 28, 2019, to keep the entire security deposit of \$800.00, towards June 2019 rent. The tenant stated that he sent a text message to the landlord that he "could" keep the deposit towards July 2019 rent, but that he did not say that he "should" keep it, as he moved out in early July and paid \$1,200.00 towards June 2019 rent, so he only owed the landlord \$500.00. The landlord provided a copy of the text message and the tenant agreed that he sent it, which states the following, in part:

Yet you have an 800 dollar damage deposit that could be applied to meet this contingency. The other rent for July is not due yet so this could not possibly be the issue.

The tenants seek a return of double the amount of their security deposit of \$800.00, totalling \$1,600.00. The landlord disputes the tenants' application, claiming that he was entitled to keep the tenants' entire security deposit of \$800.00, by way of written permission from the tenants.

Analysis

Section 38 of the *Act* requires the landlord 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 landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposit. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the 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 make the following findings on a balance of probabilities. The tenancy ended by July 9, 2019. The tenants provided a written forwarding address to the landlord by July 11, 2019. The landlord did not return the full deposit to the tenants or make an application for dispute resolution to claim against the deposit.

I find that the tenants gave the landlord written permission to keep the entire security deposit of \$800.00 towards June 2019 rent. I accept the landlord's testimony that no rent was paid by the tenants for June 2019 and that the tenants gave the landlord permission by way of text message to keep the entire deposit of \$800.00 towards this rent. The landlord provided a copy of the text message and the tenant agreed that he sent the text message to the landlord. I find that the text message gave the landlord written permission, even though it used the word "could" rather than "should," as I find that the tenant was not using a hypothetical but telling the landlord to keep the deposit towards the rent.

I find that both parties used text messages as a method of communication, and although it does not fall under section 88 of the *Act*, I find that the landlord was sufficiently served with the tenant's text message on June 28, 2019, as per section 71(2)(c) of the *Act*.

I find that the tenants gave written permission to the landlord to keep the entire security deposit of \$800.00 towards June 2019 rent. I find that the tenants are not entitled to a return of their security deposit of \$800.00 or the doubling portion of \$1,600.00. This portion of their application is dismissed without leave to reapply.

I order the landlord to retain the tenants' entire security deposit of \$800.00.

As the tenants were unsuccessful in this application, I find that they are not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

I order the landlord to retain the tenants' entire security deposit of \$800.00.

The tenants' entire application 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: November 23, 2020

Residential Tenancy Branch