



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PORT ROYAL VILLAGE DEVELOPMENTS
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

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

- authorization to obtain a return of double the amount of the remainder of the tenants' security and pet damage deposits (collectively "deposits"), pursuant to section 38; 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 28 minutes. The landlord's agent ("landlord") and the male tenant ("tenant") 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 landlord confirmed that she was the senior property manager and that she had permission to represent the landlord company named in this application at this hearing. The tenant confirmed that he had permission to represent the female tenant at this hearing (collectively "tenants").

The tenants' application was originally scheduled as a direct request proceeding, which is a non-participatory hearing. The direct request proceeding is based on the tenants' paper application only, not any submissions from the landlord. An "interim decision," dated October 5, 2020, was issued by an Adjudicator for the direct request proceeding. The interim decision adjourned the direct request proceeding to this participatory hearing.

The tenants were required to serve the landlord with a copy of the interim decision, the notice of reconvened hearing and all other required documents. The landlord confirmed receipt of the above documents from the tenants. In accordance with sections 89 and

90 of the *Act*, I find that the landlords were duly served with the above required documents.

The landlord confirmed receipt of the tenants' original application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application.

The landlord claimed that she had evidence from the landlord in front of her during the hearing. She claimed that she did not have evidence of how and when this evidence was served to the tenant or uploaded to the Residential Tenancy Branch ("RTB") website. The tenant stated that he did not receive any evidence from the landlord. I did not receive any evidence from the landlord uploaded to the RTB website. I notified both parties that I could not consider any evidence from the landlord at this hearing or in my decision, as neither I nor the tenant received any evidence and the landlord did not provide service information regarding this evidence.

Issues to be Decided

Are the tenants entitled to obtain a return of double the value of the remainder of their deposits?

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

Background and Evidence

While I have turned my mind to the tenants' 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 August 1, 2017 and the tenant moved out on May 30, 2020. A security deposit of \$1,000.00 and a pet damage deposit of \$1,000.00 were paid by the tenants and the landlord returned both deposits minus \$227.15 from the tenants' security deposit, which was retained by the landlord. A written tenancy agreement was signed by both parties. Move-in and move-out condition inspection reports were completed for this tenancy. The landlord received a written forwarding address on May 30, 2020, from the tenants by way of the move-out condition inspection report and the landlord's deposit refund form, which were given to

the landlord's agent in person. The landlord did not file an application for dispute resolution to retain any amount from the tenants' deposits.

The tenant claimed that the tenants did not give the landlord any written permission to keep any part of the tenants' deposits. The landlord claimed that the tenant initialled a tenancy agreement addendum at the beginning of the tenancy, which allowed the landlord to keep the deposits for blinds cleaning, hydro charges and other items. The landlord stated that these same charges were noted on the move-out condition inspection report as "to be determined" but that the tenants did not agree to any specific amounts and they refused to sign the deposit refund form. The tenant said that the tenants did not get a copy of the move-out condition inspection report from the landlord, so the landlord's right to keep the deposits was extinguished.

The tenants seek the return of \$454.30, which is double the value of \$227.15, which was not returned from the deposits, plus the \$100.00 application filing fee. The landlord disputes the tenants' application, claiming that the tenants owe money for hydro, blinds cleaning and other charges.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenants' deposits or file for dispute resolution for authorization to retain the deposits, 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 deposits. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the deposits 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, based on the tenants' documentary evidence and the testimony of both parties. The tenancy ended by May 30, 2020. The tenants provided a written forwarding address by way of the move-out condition inspection report and the deposit refund form, which were received by the landlord on the same date.

I find that the tenants did not give the landlord written permission to retain any amounts from their deposits. I find that the tenants did not provide permission in the tenancy agreement addendum from the beginning of the tenancy, that the landlord could keep the deposits at the end of the tenancy. As per section 20(e) of the *Act*, the landlord is not permitted to include as a term of the tenancy agreement that the landlord can keep any part of the deposits at the end of the tenancy agreement. I find that the tenants did not give permission by way of the move-out condition inspection report that the landlord could keep any part of the deposits, since no specific amount was given and the landlord did not even provide a copy of this report to the tenant or to the RTB online website for this hearing.

The landlords did not return the remaining \$227.15 from the security deposit to the tenants within 15 days or make an application for dispute resolution to claim against it.

In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenants are entitled to receive double the value of \$227.15, totalling \$454.30. There is no interest payable on the deposits during the period of this tenancy.

As the tenants were successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenants' favour in the amount of \$554.30 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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 *Residential Tenancy Act*.

Dated: December 11, 2020

Residential Tenancy Branch