



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on September 26, 2020 (the "Application"). The Tenants applied for return of the security deposit and reimbursement for the filing fee.

The Tenants and Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Tenants advised at the outset that they are seeking return of double the security deposit.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the relevant documentary evidence and all oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to return of double the security deposit?
2. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

The parties agreed on the following. There was a verbal tenancy agreement in this matter. The tenancy started October 01, 2019 and was a month-to-month tenancy. Rent was \$1,100.00 per month due on the first day of each month. The Tenants paid a \$550.00 security deposit and no pet damage deposit.

The Landlord acknowledged that they still hold the \$550.00 security deposit.

The parties agreed the tenancy ended September 01, 2020.

The parties agreed on the following. The Tenants provided a forwarding address to the Landlord by text message September 10, 2020. The Landlord did not have an outstanding monetary order against the Tenants at the end of the tenancy. The Tenants did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit. The Landlord did not apply to the RTB to keep the security deposit.

The parties agreed a move-in inspection was done but no paperwork was completed. The parties agreed both parties participated in the move-in inspection.

The Landlord testified as follows in relation to a move-out inspection. An inspection was done although a thorough inspection was not done. There was no Condition Inspection Report completed. They gave the Tenants two opportunities to do a move-out inspection verbally but not in writing.

The Tenants denied that a move-out inspection was done and testified that they were not offered any opportunity to do a move-out inspection.

I do not find it necessary to outline the documentary evidence submitted given the testimony provided and issues before me.

Analysis

Section 38 of the *Residential Tenancy Act* (the “Act”) sets out the obligations of a landlord in relation to a security deposit held at the end of a tenancy.

Section 38(1) requires a landlord to return the security deposit in full or file a claim against it within 15 days of the later of the end of the tenancy or the date the landlord

receives the tenant's forwarding address in writing. There are exceptions to this outlined in sections 38(2) to 38(4) of the *Act*.

Based on the testimony of the parties, I am satisfied the tenancy ended September 01, 2020.

Based on the testimony of the parties, I am satisfied the Tenants provided a forwarding address to the Landlord by text message September 10, 2020.

September 10, 2020 is the relevant date for the purposes of section 38(1) of the *Act*. The Landlord had 15 days from September 10, 2020 to repay the deposit in full or file a claim against the deposit.

Based on the testimony of the parties, I am satisfied the Landlord did not repay the security deposit in full or file a claim against the security deposit by September 25, 2020.

Sections 38(2) to 38(4) of the *Act* state:

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant...

Based on the testimony of the parties, I am satisfied the Tenants participated in a move-in inspection. Therefore, the Tenants did not extinguish their rights in relation to the security deposit pursuant to section 24(1) of the *Act*.

Based on the testimony of the parties, I am not satisfied the Tenants were provided an opportunity to do a move-out inspection in writing on the RTB form as required by section 35(2) of the *Act* and section 17 of the *Residential Tenancy Regulation*. Therefore, I am not satisfied the Tenants extinguished their rights in relation to the security deposit pursuant to section 36(1) of the *Act*.

Given the above, I find section 38(2) of the *Act* does not apply.

Based on the testimony of the parties, I am satisfied the Landlord did not have an outstanding monetary order against the Tenants at the end of the tenancy. Section 38(3) of the *Act* does not apply.

Based on the testimony of the parties, I am satisfied the Tenants did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit. Section 38(4) of the *Act* does not apply.

Given the above, I am satisfied the Landlord failed to comply with section 38(1) of the *Act* in relation to the security deposit and that none of the exceptions outlined in sections 38(2) to 38(4) of the *Act* apply. Therefore, the Landlord is not permitted to claim against the security deposit and must return double the deposit to the Tenants pursuant to section 38(6) of the *Act*. Therefore, the Landlord must return \$1,100.00 to the Tenants. There is no interest owed on the security deposit as the amount of interest owed has been 0% since 2009.

As the Tenants were successful in the Application, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenants are entitled to \$1,200.00. I issue the Tenants a Monetary Order in this amount.

Conclusion

The Tenants are entitled to \$1,200.00 and I issue the Tenants a Monetary Order in this amount. This Order must be served on the Landlord as soon as possible. If the

Landlord fails to comply with the Order, the 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 *Act*.

Dated: January 15, 2021

Residential Tenancy Branch