



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the compensation claimed?

Background and Evidence

The following are agreed facts: The tenancy under written agreement started on March 1, 2020 and ended September 30, 2020. At the outset of the tenancy the Landlord collected \$1,500.00 as a security deposit.

The Landlord states that it thinks that it received the Tenants’ forwarding address on October 25, 2020 but is not sure. The Tenant states that they provided their forwarding address on the move-out inspection report, the inspection having taken place on October 5, 2020. The Landlord confirms that it made its application on October 26, 2020.

The Landlord states that the Tenants owe unpaid Strata fines to the Landlord. The Landlord confirms that the tenancy agreement makes no reference to the Strata rules or fines that may be payable from breaches of the rules. The Landlord states that the Tenants were given a copy of the Strata rules after a first complaint was made. The Landlord claims \$2,200.00.

The Tenant states that the tenancy agreement did not have an addendum setting out rules or fines. The Tenant states that it was not given a copy of the Strata rules until about a month after the tenancy started.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. There is nothing in the Act or Regulations in relation to Strata rules and fines. As the tenancy agreement does not have any provision for Strata rules or fines, and given the Landlord's evidence that the Tenants were not given a copy of the Strata rules until after the signing of the tenancy agreement I find that the Landlord has not provided sufficient evidence to substantiate that the Tenants failed to comply with any term of the tenancy agreement. I dismiss this claim. As the Landlord's claim has not been successful, I find that the Landlord is not entitled to recovery of the filing fee and I dismiss this claim. In effect the Landlord's application is dismissed in its entirety.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit.

Policy Guideline #17 provides as follows:

If a landlord does not return the security deposit or apply for dispute resolution to

retain the security deposit within the time required, and subsequently applies for dispute resolution in respect of monetary claims arising out of the tenancy, any monetary amount awarded will be set off against double the amount of the deposit plus interest.

As the Landlord's evidence was vague, I prefer the Tenant's evidence and find on a balance of probabilities that the Landlord received the Tenants' forwarding address on October 5, 2020. Given the Landlord's evidence that its application was made October 26, 2020 I find that the Landlord failed to apply to retain the security deposit within the time required. The Landlord must therefore pay the Tenants double the security deposit plus zero interest of **\$3,000.00**.

Conclusion

The Landlord's application is dismissed.

I grant the Tenant an order under Section 67 of the Act for **\$3,000.00**. If necessary, this order may be filed in the Small Claims 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: February 01, 2021

Residential Tenancy Branch