



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord under the Residential Tenancy Act (the Act), seeking:

- Compensation for damage caused by the Tenants, their pets or their guests to the rental unit, site or property;
- Retention of the security deposit; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenant F.C. (the Tenant), who provided affirmed testimony. No one attended the hearing on behalf of the Landlord. Although I confirmed that the hearing details contained in the Notice of Dispute Resolution Proceeding sent by the Branch to the Landlord by email on October 20, 2020, as per their request, were correct, and the line remained open while the phone system was monitored for 21 minutes, neither the Landlord nor an agent acting on their behalf appeared at the hearing.

Further to this, the Tenant testified that neither they nor the other Tenant C.J. were ever served with a copy of the Application, the Notice of Hearing or any documentary evidence from the Landlord and that they only became aware of the hearing when they called the Branch to inquire about their rights in relation to the return of the security deposit, at which point the Branch provided them with information on how and when to attend the hearing as a courtesy. Records at the Branch indicate that the Tenant called the Branch on January 26, 2021, and was provided with a courtesy copy of the Notice of Dispute Resolution Proceeding, which contains a copy of the Application and the Notice of Hearing.

Rule 7.1 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. As the Tenant and I attended the hearing on time and ready to proceed, I commenced the hearing as scheduled at 1:30 P.M. on February 8, 2021. Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to reapply. As the Landlord failed to appear at the hearing of their own Application, or to have an agent appear on their behalf, I therefore dismiss the Landlord's Application without leave to reapply pursuant to rule 7.3 of the Rules of Procedure.

In any event, as the Tenant testified that neither they nor the Tenant were ever served with a copy of the Application, the Notice of hearing, or any evidence in relation to this matter, as required by section 59(3) of the Act and the Rules of Procedure, and there is no evidence before me to the contrary, I find that it would have been administratively unfair and a breach of the Act, the Rules of Procedure and the principles of natural justice to have heard the Landlord's claim, as I am satisfied that the Tenants did not have a fair opportunity to know the case against them or a proper opportunity to provide any evidence in their defense, as they only became aware of the hearing by chance on January 26, 2021, 13 days before the hearing.

Despite the fact that the Landlord's Application is dismissed without leave to reapply, Residential Tenancy Branch Policy Guideline (the Policy Guideline) #17 states that the arbitrator will order the return of the security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on a landlord's application to retain all or a part of the security deposit, whether or not the tenant has applied for its return, unless the tenant's right to the return of the deposit has been extinguished under the Act.

As a result, I find that I must now determine if the Tenants are entitled to the return of all, some, none, or double the amount of the security deposit.

Preliminary Matters

Although there was significant documentary evidence before me from both parties, the Tenant acknowledged that they did not serve their documentary evidence on the Landlord, due to the short notice they received from the Branch of the hearing, and denied receipt of any documentary evidence from the Landlord.

As I am not satisfied that the documentary evidence before me from either party was served in accordance with the Act and the Rules of Procedure, I have therefore excluded the documentary evidence before me from both parties for consideration. The hearing therefore proceeded based only on the affirmed and uncontested testimony of the Tenant at the hearing.

Issue(s) to be Decided

Are the Tenants entitled to the return of all, some, none, or double the amount of the security deposit?

Background and Evidence

The Tenant testified that an \$800.00 security deposit was paid at the start of the tenancy, which ended on September 30, 2020, that their forwarding address was provided to the Landlord in writing on September 30, 2020, by way of the move out condition inspection report, and that none of the security deposit has been returned to them or the other Tenant C.J. The Tenant also stated that neither they nor the Tenant C.J. have waived their right to the return of double the amount of the security deposit.

The Tenant stated that to their knowledge, move in and move out condition inspections were completed in compliance with the Act and the regulations, as C.J. attended the move in condition inspection and they attended the move out condition inspection. However, the Tenant denied receipt of the move out condition inspection report from the Landlord in compliance with the regulations, stating that they only have a copy as they took a photograph of it themselves at the inspection. They were also unsure of whether the move in condition inspection was ever provided to them by the Landlord, and if so, if it was provided within the timelines set out in the regulations.

Further to this the Tenant testified that there was no agreement in writing or otherwise for the Landlord to retain any portion of the security deposit and that to their knowledge, there was no previous Order from the Branch for the Landlord to retain any portion of the security deposit or any outstanding Monetary Orders against them or the Tenant C.J. at the end of the tenancy.

Analysis

Section 38 of the Act states that within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, the

landlord must either return the security deposit to the tenant or make an application claiming against it, unless they have a right under the Act to retain all or a portion of it.

As the Tenant testified that they provided their forwarding address in writing to the Landlord on September 30, 2020, by way of the move out condition inspection report, and there is no evidence before me to the contrary, I find that the Landlord received the Tenants' forwarding address in writing on September 30, 2020, the same day the tenancy ended.

Although I am satisfied that the Landlord filed their Application seeking to retain the Tenants' security deposit for damage to the rental unit, site or property, in compliance with the timeline set out under section 38(1), as the Application was filed with the Branch on October 14, 2020, based on the Tenant's affirmed and uncontested testimony at the hearing, I am satisfied that the Landlord failed to comply with section 23(5) or 35(4) of the Act, or both, when they failed to provide the Tenants with a copy of the move in and move out condition inspection reports as required by section 18 of the regulations.

As a result, I find that the Landlord extinguished their right to claim against the Tenants' security deposit in relation to damage, pursuant to section 24(2)(c) or 36(2)(c) of the Act, or both. As there is no evidence before me that the Landlord was entitled to retain all or a portion of the security deposit pursuant to section 38(3) or 38(4) of the Act, I find that the Landlord was therefore obligated pursuant to sections 36(2) and 38(1) of the Act and Policy Guideline #17 sections B.7 and C.3, to return the Tenants \$800.00 security deposit to them in full, no later than October 15, 2020.

As there is no evidence before me to the contrary, I am satisfied based on the Tenants affirmed testimony at the hearing that their \$800.00 security deposit has not been returned. Pursuant to section 38(6) of the Act, I therefore award the Tenants \$1,600.00, double the amount of the \$800.00 security deposit improperly retained by the Landlord.

Conclusion

The Landlord's Application is dismissed in its entirety without leave to reapply.

Pursuant to section 67 of the Act, I grant the Tenants a Monetary Order in the amount of **\$1,600.00**. The Tenants are provided with this Order in the above terms and 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. The Landlord is cautioned that costs of such enforcement may be recoverable from them by the Tenants.

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 8, 2021

Residential Tenancy Branch