



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 by way of conference call in response to an Application for Dispute Resolution filed by the Landlords on November 17, 2020 (the “Application”). The Landlords applied for compensation for monetary loss or other money owed, to keep the security deposit and for reimbursement for the filing fee.

The Tenants appeared at the hearing. The Landlords did not appear at the hearing which proceeded for 21 minutes. I waited 10 minutes at the outset of the hearing for the Landlords to call into the hearing; however, the Landlords did not do so. I confirmed from the teleconference system that the Tenants and I were the only people who called into the teleconference.

The Tenants advised that the parties have not resolved this matter and that the Landlords still hold the Tenants’ security deposit. The Tenants sought double the security deposit back.

I explained the hearing process to the Tenants. The Tenants provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Tenants testified that they received the hearing package and a tenancy agreement from the Landlords. The Tenants testified that they did not receive further evidence from the Landlords.

Tenant K.W. testified that the Tenants' evidence was sent to the Landlords at the address on the Application by registered mail on February 23, 2021. Tenant K.W. did not have the tracking number for the package available.

The Landlords were required to serve their evidence on the Tenants pursuant to rule 3.1 and 3.14 of the Rules of Procedure (the "Rules"). Based on the undisputed testimony of Tenant K.W., I accept that the Landlords did not serve their evidence on the Tenants, other than the tenancy agreement. Pursuant to rule 3.17 of the Rules, I exclude the Landlords' evidence, other than the tenancy agreement, as I find it would be unfair to consider evidence the Tenants have not seen.

I also note rule 7.4 of the Rules which states:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

The Landlords did not attend the hearing to present their evidence.

Based on the undisputed testimony of Tenant K.W., I accept that the Landlords were served with the Tenants' evidence in accordance with section 88(c) of the *Residential Tenancy Act* (the "Act"). The Landlords are deemed to have received the evidence February 28, 2021 pursuant to section 90(a) of the *Act*. I find the Tenants complied with rule 3.15 of the Rules. The Tenants' evidence is admissible.

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

Issues to be Decided

1. Are the Landlords entitled to compensation for monetary loss or other money owed?
2. Are the Landlords entitled to keep the security deposit?

3. Are the Landlords entitled to reimbursement for the filing fee?

Background and Evidence

The Tenants submitted a written tenancy agreement and testified that it is the accurate tenancy agreement. The tenancy started March 07, 2020 and was for a fixed term ending March 30, 2021. The Tenants paid a \$1,250.00 security deposit.

The Tenants testified that the tenancy ended October 31, 2020.

Tenant K.W. testified that the Tenants provided the Landlords with their forwarding address by text message on November 10, 2020. Tenant K.W. testified that the parties commonly communicated by text message during the tenancy. Tenant K.W. testified that the Landlords replied to the text message November 29, 2020. Tenant K.W. confirmed the Landlords sent the hearing package and tenancy agreement to the Tenants at their forwarding address.

Tenant K.W. testified as follows. The Tenants did not agree to the Landlords keeping the security deposit at the end of the tenancy. The Landlords did not have an outstanding monetary order against the Tenants at the end of the tenancy.

The Tenants testified as follows. There was no move-in inspection done and the Tenants were not offered two opportunities to do a move-in inspection. There was no move-out inspection done and the Tenants were not offered two opportunities to do a move-out inspection.

The Tenants submitted text messages between the parties in relation to the tenancy.

Analysis

Rule 7.3 of the Rules states:

7.3 Consequences of not attending the hearing

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 re-apply.

The Landlords did not appear at the hearing. The Tenants did appear and were prepared to address the Application. Given this, and pursuant to rule 7.3 of the Rules, the Application is dismissed without leave to re-apply.

Policy Guideline 17 states:

1. The arbitrator will order the return of a 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 part of the security deposit; or
- a tenant's application for the return of the deposit.

unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

Pursuant to Policy Guideline 17, I considered the Tenants' request for return of double the security deposit.

Section 38 of 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 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 undisputed testimony of the Tenants, I am satisfied the tenancy ended October 31, 2020.

Based on the undisputed testimony of Tenant K.W., I am satisfied the Tenants provided their forwarding address to the Landlords by text message November 10, 2020. I am satisfied the method of providing the forwarding address was sufficient. However, text message is not a permitted method of service under section 88 of the *Act* and the *Act* does not address deemed receipt of text messages. Therefore, I can only be satisfied that the Landlords received the forwarding address November 29, 2020, the date they replied to the text message.

November 29, 2020 is the relevant date for the purposes of section 38(1) of the *Act*. The Landlords had 15 days from November 29, 2020 to repay the security deposit in full or file a claim against it.

The Landlords filed the Application November 17, 2020, within the 15-day time limit. I find the Landlords complied with section 38(1) of the *Act*. However, the Landlords did not appear at the hearing to provide a basis for the Application or a basis for keeping the security deposit. Therefore, the Landlords cannot keep the security deposit based on the Application.

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 undisputed testimony of the Tenants in relation to move-in and move-out inspections, I find the Tenants did not extinguish their rights in relation to the security deposit. Section 38(2) of the *Act* does not apply.

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

Given the above, the Landlords have no authority to keep the security deposit and must return the security deposit to the Tenants. The Landlords must return \$1,250.00 to the Tenants. There is no interest owed on the security deposit as the amount of interest owed has been 0% since 2009.

Conclusion

The Application is dismissed without leave to re-apply.

The Landlords must return the \$1,250.00 security deposit to the Tenants. I issue the Tenants a Monetary Order in this amount. This Order must be served on the Landlords as soon as possible. If the Landlords fail 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: March 22, 2021

Residential Tenancy Branch