



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDB-DR, FFT

Introduction

This matter initially proceeded by way of a Direct Request Application filed by the Tenants under the *Residential Tenancy Act* (the “Act”), made on September 24, 2020. The Tenants applied for the return of their security deposit and to recover her filing fee. An Interim Decision from that proceeding was issued on October 6, 2020, that ordered the direct request proceeding be reconvened in accordance with section 74 of the Act and heard as a participatory hearing to be conducted by an arbitrator appointed under the Act is required in order to determine the details of the Tenants' application.

The participatory hearing for the Tenants' Application was held on December 11, 2020. A Decision and Order for that hearing was issued on December 11, 2020, granting the Tenants a monetary order in the amount of \$3,100.00 for the recovery of the security deposit for their tenancy and the filing fee for their application.

On December 30, 2020, the Landlords applied for a review consideration of the Decision issued on December 11, 2020. The Landlord's application was granted, the Review Consideration Decision dated December 31, 2020, suspended the Decision and Order dated December 11, 2020, until the Review Hearing scheduled for March 23, 2021. The Landlord's application for review consideration had been granted on the grounds that the Landlords were unable to attend the original hearing because of circumstances beyond their control. Pursuant to section 82(2)(c) of the Act, it was ordered that a new hearing be held to consider the Tenants' original application.

This Review Hearing decision should be read in conjunction with the Direct Request Interim decision dated October 6, 2020, the Original Hearing decision dated December 11, 2020, and the Review Consideration decision dated December 31, 2020.

One of the Landlords and both Tenants attended the hearing and were each affirmed to be truthful in their testimony. Both the Tenants and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Has there been a breach of Section 38 of the *Act* by the Landlord?
- Are the Tenants entitled to the return of their security deposit?
- Are the Tenants entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement recorded that this tenancy began on May 1, 2019, as a month-to-month tenancy, that rent in the amount of \$1,500.00 was to be paid by the first day of each month and that the Tenants paid the Landlord a \$750.00 security deposit and a \$750.00 pet damage deposit at the outset of this tenancy. The Tenant's submitted a copy of the tenancy agreement into documentary evidence.

The Tenants testified that they gave written notice to the Landlord to end their tenancy on July 29, 2020, and that they moved out in accordance with that notice on September 1, 2020. The Tenants also testified that they provided the Landlord with their forwarding address in writing on September 1, 2020, during the move-out inspection.

The Landlord testified that the Tenants had provided them with a written forwarding address by writing the address on the back of the move-out inspection document on September 1, 2020.

The Landlord testified that the address written on the back of the move-out inspection document was not a valid address as it did not include a postal code and that they, therefore, were in receipt of the Tenants forwarding address in accordance with the Act. The Landlord submitted a copy of the written forwarding address they received into documentary evidence.

The Landlord also testified that they had attempted to send a letter to the address provided by the Tenants and that the address was not good. When asked if Canada Post had returned the letter they had sent, the Landlord testified that they do not know because they do not have a key for the returned mail address's mailbox.

The Landlord testified that as of the date of these proceedings, he had applied for a hearing claiming against the deposits for this tenancy. When asked, the Landlord was unable to clearly testified to when they filed their claim, provided the file number or date of the hearing for their claim. The Landlord testified that they think they applied sometime in December 2020.

Analysis

Based on the testimony, the documentary evidence before me, and on a balance of probabilities, I find as follows:

Section 38(1) of the *Act* gives the landlord 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an Application for Dispute Resolution claiming against the deposits or repay the security deposit and pet damage deposit to the tenant.

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I accept the agreed-upon testimony of these parties and find that this tenancy ended on September 1, 2020, the date the Tenant moved out of the rental unit and that the Tenants provided their forward address to the Landlord that same day by writing the address on the back of the move-out inspection.

I have reviewed the address provided to the Landlord, and I noted that the address is the same address listed by the Tenants on their application for these proceedings. I acknowledge that the Tenants had neglected to include a postal code on the written address provided to the Landlord. However, I find that it would have been reasonable of this Landlord to conduct a simple postal code search through Canada Post to obtain this missing information so they could meet the statutory timeline to make a claim or return the deposit to the Tenants.

Additionally, the Landlord has submitted six pages of text messages between themselves and the Tenant, dated after this tenancy had ended. I have reviewed these text messages, noting that at no time does the Landlord communicate to the Tenants that there was a problem with the forwarding address they provided.

Overall, I find that the Landlord was in receipt of the correct forwarding address for the Tenants as of September 1, 2020, and that the Landlord had until September 16, 2020, to comply with section 38(1) of the *Act* by either repaying the deposits in full to the Tenants or submitting an Application for Dispute resolution to claim against the deposits. The Landlord, in this case, did not return the deposits for this tenancy and did not file their claim until after the statutory timeline to do so had expired.

At no time does a landlord have the right to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. If the landlord and the tenant are unable to agree, in writing, to the repayment of the security deposit or that deductions be made, the landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later. It is not enough that the landlord thinks they are entitled to keep even a small portion of the deposit based on unproven claims.

I find that the Landlord breached section 38 (1) of the *Act* by not returning the Tenants' deposits or filing a claim against the deposits within the statutory timeline.

Section 38 (6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return or apply to retain the deposit within the required 15 days, the landlord must pay the tenant double the security deposit.

Return of security deposit and pet damage deposit

38 (6) *If a landlord does not comply with subsection (1), the landlord*
(a) may not make a claim against the security deposit or any
pet damage deposit, and
(b) must pay the tenant double the amount of the security
deposit, pet damage deposit, or both, as applicable.

Therefore, I find that pursuant to section 38(6) of the *Act*, the Tenants have successfully proven that they are entitled to the return of double their security and pet damage deposits. I find for the Tenants, in the amount of \$3,000.00, granting a monetary order for the return of double the security deposit and pet damage deposit for this tenancy.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants have been successful in their application, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this hearing.

Section 82 of the *Act* speaks to Review of Director's decision and order, and provides in part as follows:

Review of director's decision or order

- 82 (2)** The director may conduct a review
(c) by holding a new hearing.
(3) Following the review, the director may confirm, vary or set aside the original decision or order.

Arising from the finding set out above, and pursuant to section 82 of the *Act*, I hereby confirm the Decision and Monetary Order dated December 11, 2020.

Conclusion

I order that the Decision and Monetary Order dated December 11, 2020, are reinstated.

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: March 23, 2021

Residential Tenancy Branch