



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

On November 16, 2020, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for a return of the security deposit pursuant to Section 38 of the *Residential Tenancy Act* (the “Act”).

Tenant Y.W. attended the hearing. The Landlord attended the hearing as well, with B.X. attending as an agent for her. All parties in attendance provided a solemn affirmation.

The Tenant advised that the Notice of Hearing and evidence package was served to the Landlord by regular mail on November 23, 2020. B.X. confirmed that the Landlord received this package and he did not have any position with respect to the manner with which this package was served. While the Notice of Hearing package was not served in accordance with Section 89 of the *Act*, as the Landlord was prepared to proceed, I am satisfied that the Landlord was served the Notice of Hearing and evidence package. Furthermore, as the Tenants’ evidence was served in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this Decision. However, as the Tenants did not serve their digital evidence to the Landlord, this will be excluded and not considered when rendering this Decision.

B.X. advised that the Landlord’s evidence was not served to the Tenants. As such, this evidence was excluded and not considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a return of double the security deposit?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on November 20, 2019 and that the tenancy ended on or around March 4, 2020 when the Tenants gave up vacant possession of the rental unit. Rent was established at \$1,200.00 per month and it was due on the 19th day of each month. Despite not being indicated on the tenancy agreement, a security deposit of \$1,200.00 was also paid. A copy of the written tenancy agreement was submitted as documentary evidence.

The Landlord was cautioned that pursuant to Section 19 of the *Act*, a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement cannot be required or accepted. Furthermore, if the Landlord accepted a security deposit or a pet damage deposit that is greater than the amount permitted, the Tenants may deduct the overpayment from rent or otherwise recover the overpayment.

The Tenant advised that he provided the Landlord with their forwarding address in writing on March 3, 2020 by putting a letter under the Landlord's door. However, he did not have any proof of doing so, nor did he have a witness to confirm service. B.X. stated that the Landlord never received this letter.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. As such, the burden of proof is on the Tenants in this Application to prove that a forwarding address in writing was provided to the Landlord. However, based on the contradictory

testimony before me, without any evidence to support the Tenants' claim that a forwarding address in writing was provided on March 3, 2020, I am not satisfied that the Tenants have done so.

Therefore, the Landlord is put on notice that she now has the Tenants' forwarding address and she must deal with the security deposit in accordance with Section 38 of the *Act*. The Landlord is deemed to have received this Decision 5 days after the date it was written and will have 15 days from that date to deal with the deposit. If the Landlord does not deal with the security deposit pursuant to Section 38 of the *Act* within 15 days of being deemed to have received this Decision, the Tenants can then re-apply for double the deposit, pursuant to the *Act*.

Furthermore, as the Landlord collected a security deposit in excess of what was permitted under the *Act*, pursuant to Section 19 of the *Act*, the overpayment can be applied to any rental arrears. However, if there is a dispute over this amount or of any rental arrears, the Tenants must apply for Dispute Resolution to have this matter addressed if this overpayment is not returned.

Conclusion

Based on my findings above, I dismiss the Tenants' Application for a return of double the security deposit with leave to reapply.

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 8, 2021

Residential Tenancy Branch