



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDB-DR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of the tenant's security and pet damage deposits (collectively "deposits"), pursuant to section 38.

The female landlord ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. This hearing lasted approximately 40 minutes.

The landlord confirmed that she was the owner of the rental unit and the male landlord named in this application assisted her with tenancy duties. The landlord confirmed that she had permission to speak on behalf of the male landlord (collectively "landlords").

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the Act, I find that the landlords were duly served with the tenant's application.

The landlord confirmed that the landlords did not submit any evidence for this hearing.

I explained the hearing and settlement processes to both parties. Both parties confirmed that they wanted to proceed with this hearing, and they wanted me to make a decision regarding the tenant's application.

Issue to be Decided

Is the tenant entitled to a return of her deposits?

Background and Evidence

While I have turned my mind to the tenant's documentary evidence and the testimony of both parties, not all details of the submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on January 31, 2020 and ended on November 1, 2020. Monthly rent in the amount of \$3,800.00 was payable on the last day of each month, in advance. A security deposit of \$1,900.00 and pet damage deposit of \$1,900.00 were paid by the tenant and the landlords continue to retain both deposits in full. Both parties signed a written tenancy agreement. A move-in condition inspection report was completed but a move-out condition inspection report was not completed for this tenancy. The landlords did not provide an RTB form to the tenant to schedule a move-out condition inspection. A written forwarding address was provided by the tenant to the landlords, by way of an email and text message, both on November 7, 2020. The landlord agreed that she received the tenant's email on November 11, 2020. The tenant provided written permission for the landlords to retain \$207.00 for utilities and \$167.00 for one day of rent, from her security deposit. The landlords did not file an application for dispute resolution to keep any amount from the tenant's deposits.

The tenant seeks a return of her security deposit of \$1,900.00, minus \$374.00 for the rent and utilities she agreed that the landlords could retain, for a balance of \$1,526.00. The tenant seeks a full return of her pet damage deposit of \$1,900.00. The tenant seeks a return of \$3,426.00 total, from both deposits.

Analysis

Section 38 of the *Act* requires the landlords to either return the tenant's deposits or file for dispute resolution for authorization to retain the deposits, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposits. However, this provision does not apply if the landlords have obtained the tenant's written authorization to retain all or a portion of the deposits to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlords, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings, on a balance of probabilities. This tenancy ended on November 1, 2020. The tenant gave the landlords written permission to keep \$374.00 from her deposits. The landlords did not file an application to keep the deposits.

I find that the tenant provided her written forwarding address to the landlords, which was received on November 11, 2020, by way of email. Although email is not a permitted method under section 88 of the *Act*, the landlord acknowledged receipt of the tenant's email. Therefore, I find that the landlords were sufficiently served with the tenant's forwarding address, as per section 71(2)(c) of the *Act*.

As the tenant's forwarding address was not served as per section 88 of the *Act*, I find that the tenant is not entitled to the return of double the value of her deposits.

Over the period of this tenancy, no interest is payable on the tenant's deposits. In accordance with section 38(6)(b) of the *Act*, I find that the tenant is entitled to a return of the original amount of both deposits of \$3,800.00, minus \$374.00 for utilities and rent, for a balance of \$3,426.00, from the landlords.

Conclusion

I order the landlords to retain \$374.00 from the tenant's security deposit of \$1,900.00.

I issue a monetary Order in the tenant's favour in the amount of \$3,426.00 against the landlord(s). The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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.

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 25, 2021

Residential Tenancy Branch