



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDB-DR, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- an order for the landlord to return the security deposit, under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. Landlord CX (the landlord) represents both landlords. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing both parties affirmed they understand it is prohibited to record this hearing.

Preliminary Issue – Service of the Notice of Hearing and Evidence

The landlord confirmed receipt of the notice of hearing and evidence (the materials) by registered mail in January 2021. I accept the tenants served the materials in accordance with section 89(1)(c) of the Act.

The landlord affirmed he served his evidence by registered mail in a single package addressed to tenant KS on April 06, 2021.

Residential Tenancy Branch Policy Guideline 12 states:

All parties named on an application for dispute resolution must be served notice of proceedings, including any supporting documents submitted with the application. **Where more than one party is named on an application for dispute resolution, each party must be served separately. Failure to serve documents in a way recognized by the Legislation may result in the application being adjourned, dismissed with leave to reapply, or dismissed without leave to reapply.**
[emphasis added]

Based on the landlord's testimony, I find the tenants were not served the landlord's response evidence in accordance with sections 88 or 89 of the Act, as both of them

were served together. As noted above, each party must receive individually the supporting evidence.

As such, I do not accept the landlord's evidence.

Issues to be Decided

Are the tenants entitled to:

1. an order for the landlord to return the security deposit?
2. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the tenants' obligation to present the evidence to substantiate the application.

Both parties agreed they signed a tenancy agreement on September 24, 2020 for a fixed-term tenancy for the period of October 01, 2020 to September 30, 2021. Monthly rent was \$2,800.00 due on the first day of the month. The landlord collected a security deposit of \$1,400.00 and a pet damage deposit of \$1,400.00 and holds them in trust.

Both parties also agreed the tenants took possession of the rental unit on September 28, 2020 and vacated it on October 30, 2020. The parties did not sign the condition inspection report. The tenants affirmed they did not move in because the rental unit was not clean and asked to end the tenancy agreement on September 29, 2020.

The landlord confirmed receipt of the tenants' forwarding address in writing on October 30, 2020 (submitted into evidence). The tenants affirmed they did not authorize the landlord to retain the security and pet damage deposits.

The tenants submitted into evidence the direct request worksheet. The total amount the tenants are claiming is \$5,600.00.

Analysis

Section 16 of the Act states:

The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Based on the uncontested testimony of both parties, I find the parties entered into a fixed-term tenancy agreement when they signed the tenancy agreement on September 24, 2020.

Section 44 of the Act states:

- (1) A tenancy ends only if one or more of the following applies:
 - (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
 - (i) section 45 [tenant's notice];
 - (i.1) section 45.1 [tenant's notice: family violence or long-term care];
 - (ii) section 46 [landlord's notice: non-payment of rent];
 - (iii) section 47 [landlord's notice: cause];
 - (iv) section 48 [landlord's notice: end of employment];
 - (v) section 49 [landlord's notice: landlord's use of property];
 - (vi) section 49.1 [landlord's notice: tenant ceases to qualify];
 - (vii) section 50 [tenant may end tenancy early];
 - (b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
 - (c) the landlord and tenant agree in writing to end the tenancy;
 - (d) the tenant vacates or abandons the rental unit;**
 - (e) the tenancy agreement is frustrated;
 - (f) the director orders that the tenancy is ended;
 - (g) the tenancy agreement is a sublease agreement.

(emphasis added)

Based on the uncontested testimony of both parties, I find the tenancy ended on October 30, 2020, pursuant to section 44(1)(d) of the Act.

Section 38(1) of the Act requires the landlord to either return the tenants' security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

The landlord confirmed receipt of the tenants' forwarding address in writing on October 30, 2020.

Section 38(6) of the Act requires the landlord to pay double the deposit if the landlord does not comply with section 38(1):

- (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.

Residential Tenancy Branch Policy Guideline 17 states the tenant is entitled to double the deposit if the landlord claimed against the deposit when his right to do so has been extinguished under the Act:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

Under these circumstances and in accordance with section 38(6)(b) of the Act, I find the tenants are entitled to a monetary award of \$5,600.00 (double the \$1,400.00 security deposit and the \$1,400.00 pet damage deposit).

As the tenants' application is successful, I award the tenants the return of the filing fee.

Conclusion

I grant the tenants a monetary order pursuant to sections 38(6)(b) and 72 of the Act, in the amount of \$5,700.00

This order must be served on the landlords by the tenants. If the landlords fail to comply with this order the tenants may file the order in the Provincial Court (Small Claims) to be 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: April 27, 2021

Residential Tenancy Branch