



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS_DR, FFT

Introduction

The tenants filed an Application for Dispute Resolution (the “Application”) on December 2, 2020 seeking an Order granting a refund of the security deposit, as well as a recovery of the filing fee for the hearing process.

This participatory hearing was convened after an agent of this office determined the correct information regarding the landlord’s address was not in place to proceed by a direct request proceeding. The agent informed the tenant of this on January 4, 2021. This generated a Notice of Hearing sent to the Applicant tenant and the Respondent landlords.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the *Act*) on May 4, 2021. In the conference call hearing I explained the process and provided the parties the opportunity to ask questions.

The tenant here confirmed they used the address of the landlord that they independently verified as that which the landlord used to carry on business. This is on the same property as their prior rental unit address, so readily identified as such. They sent registered mail containing notice of this hearing and their prepared documentary evidence to the landlord on January 8, 2021. The tracking number for this mail is provided.

At the start of the hearing, the landlord stated they did not receive the prepared evidence of the tenants. I informed the parties that any gaps in information where the tenants need to rely on any certain document’s content would be addressed carefully in the hearing. In the hearing, I reviewed all documents in detail and cross-referenced the landlord’s own knowledge on that particular piece of information contained therein.

Based on what the tenants provide here, I find it more likely than not that they sent registered mail to the landlord containing their prepared evidence for this hearing, in line with the service provision of s. 89(1)(c). On this basis, the hearing proceeded.

Issue(s) to be Decided

Are the tenants entitled to an Order granting a refund of the security deposit pursuant to s. 38(1)(c) of the *Act*?

Are the tenants entitled to recover the filing fee for this application pursuant to s. 72 of the *Act*?

Background and Evidence

The tenants submitted a copy of the one-page tenancy agreement for this hearing. Both parties signed the agreement prior to the start of the tenancy on March 17, 2019. The rent was \$1,550 per month payable on the first day of each month. The tenants provided a \$750 security deposit. In the hearing the tenants stated there was no walk-through inspection meeting at the start of the tenancy.

The tenancy ended on October 30, 2020. This was the tenants' move-out date. The tenants provided the landlord notice to end the tenancy on September 24, 2020, for the final date of October 31, 2020.

The tenants did vacate one day prior to this on October 30. On this date the landlord arrived, and the tenants here described how the landlord made their way into the unit and responded that they would review the condition of the unit with the incoming tenant. The tenants stated this did not resemble a walk-through inspection meeting, and there was no document to outline the condition of the rental unit upon their move out.

The tenants presented a letter dated October 30, 2020. This contains both tenants' signatures and shows their forwarding address. In the hearing, the tenants provided their affirmed testimony that they handed this document to the landlord on October 30, 2020 when they met the landlord at the rental unit.

In the hearing the landlord stated they were not sure they received the tenants forwarding address at the time of their move out. They stated the tenants wanted the

return of their security deposit on the same day as their move out; however, the landlord did not have time to deal with this appropriately.

When a new tenant came into the unit two days later, they identified an issue with appliances to the landlord. This new tenant then made a purchase for a new appliance to replace one that was allegedly damaged. The landlord then retained the security deposit of the tenants here for the purpose of that replacement cost. The landlord submitted a photo depicting damage to the stove unit, and a message from the new tenant to the landlord sets out the cost of replacement appliances.

Analysis

The *Act* s. 38(1) states that within 15 days after the later of the date the tenancy ends, or the date the landlord receives the tenant's forwarding address in writing, the landlord must repay any security or pet damage deposit to the tenant or make an Application for Dispute Resolution for a claim against any deposit.

Further, s. 38(6) of the *Act* provides that if a landlord does not comply with subsection (1), a landlord must pay the tenant double the amount of the security and pet damage deposit.

From the evidence I find as fact that the tenant provided their forwarding address to the landlord on October 30, 2020. The evidence for this is the single document, signed by both tenants, precisely providing this information. The landlord could not recall receiving this from the tenants.

With both parties providing oral testimony under oath, I give the tenants statements more weight in establishing this as fact. The tenants expressed their statements with surety and referred to a single document they submitted as evidence. The landlord gave their statement expressing uncertainty. Additionally, the landlord did not present any viable factual narrative; therefore, there is no alternative version of events to compare to that of the tenants here. I accept the tenants' statements as more credible on this single point.

I find the evidence shows the landlord received the tenant's forwarding address information on October 30, 2020 and did not subsequently make a claim against the deposit within the legislated timeframe of 15 days. In sum, I find the landlord retained the deposit for damages they discovered after the tenancy ended. It is clear from the evidence that the landlord intended to keep the deposit to offset costs of damages discovered after the move out. When provided with the tenants' address information,

the landlord had the opportunity to register a claim to retain that deposit; however, there is no record that they did so. In the hearing, the landlord clearly stated they did not make such a claim.

I find the landlord did not return the deposit to the tenants as the *Act* requires. This constitutes a breach of section 38(1); therefore, section 38(6) applies, and the landlord must pay double the amount of the security deposit. This is \$1,500.

As the tenant was successful in this application, I find the tenant is entitled to recover the \$100 filing fee they paid for this application.

Conclusion

I order the landlord to pay the tenant the amount of \$1,600. This is double the security deposit amount total of \$750. This includes the amount of \$100.00 for the application filing fee. I grant the tenant a monetary order for this amount. The tenants may file this monetary order in the Provincial Court (Small Claims) and where it may 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 s. 9.1(1) of the *Act*.

Dated: May 5, 2021

Residential Tenancy Branch