



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants as against the landlords seeking a monetary order for return the security deposit or pet damage deposit, and to recover the filing fee from the landlords for the cost of the application. The tenants' application was made by way of the Direct Request process which was referred to this participatory hearing and an Interim Decision dated June 18, 2021 was provided to the tenants. The Interim Decision requires the tenants to serve the landlords with a copy of the Interim Decision, a Notice of Reconvened Hearing and all other required documents within 3 days of receiving the Interim Decision.

Two of the 3 named tenants attended the hearing, and 1 of the tenants represented all 3 tenants and gave affirmed testimony. The tenant also called 1 witness who gave affirmed testimony. Both named landlords also attended, one of whom also gave affirmed testimony. The parties were given the opportunity to question each other and the witness and to give submissions.

During the course of the hearing I found that both parties have exchanged all of the evidence, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Have the tenants established a monetary claim as against the landlords for return of all or part or double the amount of the security deposit?

Background and Evidence

The tenant (MGH) testified that he moved into the rental unit with 2 co-tenants on June 1, 2020 and paid the landlords a security deposit in the amount of \$1,300.00 that day. The co-tenants moved out and the landlords prepared a new tenancy agreement for a new tenancy to begin on November 26, 2020 on a month-to-month basis, but only pages 1 and 6 of 6 pages. It was changed because the 2 co-tenants vacated and 2 more co-tenants moved in. A copy the 2-page form has been provided for this hearing.

Rent in the amount of \$2,600.00 was payable on the 1st day of each month and there are no rental arrears. The landlords did not collect a pet damage deposit from the tenants.

The tenant further testified that the tenants were supposed to vacate the rental unit on March 31, 2021 however the truck wasn't ready so there were a couple of things left, which were not retrieved until April 8, 2021. Because the tenants didn't live there, the tenants did not pay any rent for April. The landlord said that it was perfectly fine to leave some items until the truck was ready, and that no one was moving in immediately.

The tenant served the landlords with a forwarding address in writing using a Residential Tenancy Branch Form, #RTB-47 – Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit, and a copy has been provided for this hearing. It is dated April 30, 2021. The tenant testified that he served it on April 30, 2021 by leaving it in the landlords' mailbox, and a Proof of Service document has also been provided, confirming that testimony and signed by the tenant and a witness.

The tenants did not agree in writing that the landlords keep any portion of the security deposit and the landlords have not served the tenants with an Application for Dispute Resolution claiming against the deposit.

The tenant's witness testified that he is a friend of the tenants and recalls that on April 1, 2021 he was helping the tenants move out of the rental unit, but were not able to get all belongings out on time and had to wait for a truck. The landlord swung by and said no one was moving in until the 15th of the month.

On April 30, 2021 the tenant wanted the witness to witness service of the document containing the tenant's forwarding address. They parked behind the landlords' house and the tenant walked it over to the mailbox.

The landlord (JS) testified that there was no move-in inspection report completed at move-in; the parties inspected the rental unit together and verbally agreed upon the condition of the rental unit. The same process took place at move-out.

The landlord does not recall when the tenants' forwarding address was received, but agrees that the form #RTB-47 was received.

The landlords lost rental revenue for a half a month, and only wanted to keep the security deposit of half a month's rent even though there were damages. The landlords did not make an application claiming against the security deposit and did not have the tenants' consent in writing to keep the deposit.

Analysis

The *Residential Tenancy Act* requires a landlord to return a security deposit and/or pet damage deposit to a tenant in full within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an Application for Dispute Resolution claiming against the deposit within that 15 day period, unless the tenant otherwise agrees in writing. If the landlord fails to do either the landlord must repay double the amount to the tenant.

In this case, I find that the tenancy ended on April 8, 2021 and the tenants paid rent to March 31, 2021.

There is no question that on April 30, 2021 the tenant served the landlords with a forwarding address in writing by placing the letter in the landlords' mailbox, which is deemed to have been served 3 days later, or May 3, 2021. The landlords have not returned any portion of the security deposit and have not made an application for dispute resolution, and the 15 day period expired on May 18, 2021.

Therefore, I find that the tenants are entitled to double recovery of the \$1,300.00 security deposit, or \$2,600.00.

Since the tenants have been successful with the application, the tenants are also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,700.00.

This order is final and binding and may be enforced.

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: October 19, 2021

Residential Tenancy Branch