



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 seeking a monetary order for return of the security deposit and to recover the filing fee from the landlord for the cost of the application. The application was made by way of the Direct Request process which was referred to this participatory hearing and an Interim Decision was provided to the tenants.

The landlord and one of the tenants attended the hearing and the tenant represented all tenants. The parties each gave affirmed testimony and were given the opportunity to question each other and to give submissions.

The tenant testified that he provided all of the tenants' evidence to the landlord, but took exception to the method that the landlord provided evidence to the tenants; the landlord gave the tenant an envelope with 5 copies of the evidence.

Where a party makes a monetary claim as against more than 1 respondent, the claiming party must serve each of the respondents individually. There is nothing in the Rules of Procedure or the *Residential Tenancy Act* that specifies that evidence must be served individually. Therefore, all evidence provided by the parties has been reviewed and is considered in this Decision.

Issue(s) to be Decided

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

Background and Evidence

The tenant testified that this fixed term tenancy began on May 1, 2020 and expired on April 30, 2021. A copy of the tenancy agreement has been provided for this hearing which specifies that at the end of the fixed term the tenants were required to vacate the rental unit for “owner occupancy,” and the rental unit was vacated on May 1, 2021. The parties had a verbal agreement to extend the date of vacancy for 1 day. Rent in the amount of \$3,400.00 was payable on the 1st day of each month and there are no rental arrears.

No move-in condition inspection report was completed at the beginning of the tenancy, and the tenant testified that the landlord gave the tenant 2 opportunities to complete a move-out condition inspection report, but the tenant wasn't available. The landlord did not serve a final opportunity to schedule the move-out condition inspection report in the approved form.

At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$1,700.00. On May 9, 2021 the tenants provided a forwarding address to the landlord by email and a copy has been provided for this hearing. The landlord has not returned any portion of the security deposit to the tenants, and has not served the tenants with an Application for Dispute Resolution claiming against the security deposit. The tenants claim double the amount.

The tenant also testified that since the landlord did not cause a move-in condition inspection report to be completed at the beginning of the tenancy, the landlord's right to claim the security deposit is extinguished. The tenants did not agree in writing that the landlord retain any portion of it.

The landlord testified that the landlord understood that a form for a move-in condition inspection report is not required. The parties agreed during the walk-through that nothing was in need of repair. The tenant emailed the landlord about repairs but said that a move-out condition inspection wasn't relevant because no move-in report had been completed and that damages were wear and tear. The parties had a conversation about damages, but the tenants didn't agree in writing that the landlord keep the security deposit.

The landlord did not make an application claiming the security deposit because since the tenant didn't attend for the move-out condition inspection, the tenant's right to claim against the security deposit was extinguished. The landlord didn't think that the final

opportunity to schedule the move-out condition inspection had to be in an approved form, and the tenant didn't propose another time.

The landlord testified that the landlord received the tenant's forwarding address in an email on May 9, 2021, but only received 1 address and there are 5 tenants.

Analysis

The *Residential Tenancy Act* specifies that a landlord must return a security deposit in full to a tenant 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 security deposit within that 15 day period. If the landlord fails to do either, the landlord must repay double the amount.

The law also puts the onus on the landlord to ensure that move-in and move-out condition inspection reports are completed in accordance with the regulations. The landlord did not cause the move-in condition inspection report to be completed, and whether or not the landlord gave 2 opportunities to conduct the move-out condition inspection, the landlord's right to claim against the security deposit for damages is extinguished, and that occurred first.

At move-out, the landlord must schedule the inspection and if the tenant isn't available, the landlord must propose a second date, different from the first. However, the landlord is required to give a Notice of Final Opportunity to Schedule a Condition Inspection in the approved form. Since the landlord did not do so, the tenants' right to claim the security deposit is not extinguished.

In this case, the tenancy ended on May 1, 2021 and the landlord received the tenants' forwarding address in writing by email, which was received by the landlord on May 9, 2021. The landlord did not return any portion of the security deposit to the tenants, and did not make an Application for Dispute Resolution claiming against the security deposit; and therefore must repay double the amount, or \$3,400.00. It is up to the tenants to apportion it as they see fit.

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 landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,500.00.

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: November 12, 2021

Residential Tenancy Branch