



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenants for the return of double their security deposit pursuant to Sections 38(1) and (6) of the Residential Tenancy Act (the “Act”), as well as the recovery of the filing fee.

One of the Landlords and both Tenants appeared for the hearing, but only the Landlord and the female Tenant provided affirmed testimony. The Landlord confirmed receipt of the Tenants’ Application, the Notice of Hearing documents, and the Tenants’ written evidence by registered mail.

The Landlord had provided written evidence prior to this hearing but this evidence was not available before me at the time of the hearing as it was submitted late in accordance with the Rules of Procedure. The Tenants denied receipt of the Landlord’s evidence and the Landlord failed to provide supporting evidence to show that the Tenants had been served with this written evidence. As a result, I continued the hearing without the Landlord’s written evidence as follows.

Issue(s) to be Decided

Are the Tenants entitled to the return of double the amount of their security deposit?

Background and Evidence

Both parties agreed that this tenancy started on August 1, 2011 and was for a fixed term of one year after which it continued on a month to month basis. A written tenancy agreement was completed and shows that rent was payable by the Tenants to the Landlords in the amount of \$800.00 on the first day of each month. The Tenants paid an \$800.00 security deposit on the start date of the tenancy which the Landlord still retains. I note that there is no interest payable on this security deposit.

The Tenant testified that the tenancy ended when they vacated the rental suite on December 31, 2013. The Tenant testified that on February 25, 2014 they sent the Landlord a letter, which contained their forwarding address, by registered mail to the same address they had used to serve a copy of their Application. The Tenants provided in written evidence a copy of the letter and the Canada Post tracking report which indicates that the letter was received on February 28, 2014.

The Landlord confirmed receipt of the Tenants' forwarding address by registered mail on February 28, 2014 and testified that she had not returned the Tenants' security deposit because they had failed to give written notice to end the tenancy and had caused damages to the rental suite. The Landlord explained that she had submitted proof of this in her written evidence which disclosed a monetary claim against the Tenants.

The Tenants claim \$1,600.00, which comprises of double the amount of their security deposit, for the failure of the Landlords to return their security deposit.

Analysis

Section 38(1) of the Act states that, within 15 days of the later of the date the tenancy ends and date the Landlord receives the Tenant's forwarding address in writing, the Landlord must repay the security deposit or make an Application to claim against it.

I accept that the tenancy ended on December 31, 2013 which is when the Tenants vacated the rental suite and that the Landlord received the Tenants' forwarding address in writing on February 28, 2014.

As a result, the Landlords were required within 15 days of receiving the Tenants' forwarding address to either: repay the Tenants' security deposit; seek the Tenants' consent **in writing** to keep the deposit; or make an Application to claim against it; none of which the Landlords did.

Section 38(6) (b) of the Act states that if a Landlord does not comply with the above, the Landlord must pay the Tenant double the amount of the security deposit.

As a result, I find that the Tenants are entitled to **\$1,600.00** as monetary compensation due to a failure of the Landlords to deal with the Tenants' security deposit in accordance with the Act.

As the Tenants have been successful in this matter, I also award the filing fee of **\$50.00** for the cost of having to make this Application, pursuant to Section 72(1) of the Act. Therefore, the total amount awarded to the Tenants is \$1,650.00

The Landlords are still at liberty to make an Application for monetary losses incurred under the Act.

Conclusion

For the reasons set out above, I grant a Monetary Order in the amount of **\$1,650.00** in favor of the Tenants pursuant to Section 67 of the Act. This order must be served on the Landlords and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Landlords fail to make payment.

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: July 24, 2014

Residential Tenancy Branch

