



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

A hearing was conducted by conference call in the presence of the tenant applicants and in the absence of the respondents although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlords by mailing, by registered mail to where the landlords reside. With respect to each of the applicants' claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenants are entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on February 15, 2015. The rent was \$1600 per month payable in advance on the first day of each month. The tenants paid a security deposit of \$800 on February 12, 2015. The rental unit was supposed to be "non smoking." However, during the process of moving in the tenants determined the smoking from the downstairs tenant prevented them from enjoying the rental unit. The tenants advised the landlord in writing they were not moving in. The landlord refused to refund the security deposit and the rent for the period February 15, 2015 to February 28, 2015.

Law

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the

landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

Analysis

With respect to each of the tenants' claims I find as follows:

- a. The tenants acknowledged they have not provided the landlord with their forwarding address in writing. This is a requirement under section 38 which provides as follows:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

As a result I determined the application is premature. I ordered that the application for the return of the deposit is dismissed with liberty to re-apply. I make no findings on the merits of the matter. Liberty to reapply is not an extension of any applicable limitation period.

- b. The tenants claimed the return of the rent in the sum of \$800 for the period February 15, 2015 to February 28, 2015 as they did not move in. Section 45(3) and (4) provides as follows:

"Tenant's notice

45 (3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*."

The tenants acknowledged they inadvertently failed to provide the Residential Tenancy Branch Registry with copies of written communication with the landlord. I determined in the absence of this evidence that it is not possible to determine whether the tenants have complied with section 45(3). As a result I ordered this application dismissed with liberty to re-apply. I make no findings on the merits of the matter. Liberty to reapply is not an extension of any applicable limitation period.

- c. The tenants have not been successful in this application. I ordered the application for the recover of the \$50 filing fee be dismissed without liberty to re-apply.

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: August 07, 2015

Residential Tenancy Branch

