



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was scheduled pursuant to the *Residential Tenancy Act* (the “Act”) in response to a successful application filed by the landlord for review of a decision and order dated September 28, 2016. In the original decision, the tenant was granted a monetary order in the amount of \$950.00 for the return of the original security deposit and recovery of the \$100.0 filing fee. The original decision and order were subsequently suspended by way of a review consideration decision dated November 8, 2016 pending the outcome of this review hearing.

The tenants and landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Each party confirmed that they had received the other party’s evidence. Neither party raised any issues regarding service of the evidence. Both parties were given full opportunity to give affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Are the tenants authorized to obtain a return of all or a portion of their security deposit?

Are the tenants authorized to recover the filing fee for this application from the landlord?

Background and Evidence

The parties agreed that a written tenancy agreement did not exist; the tenancy was based on a verbal agreement. As per the testimony of the parties, the tenancy began on December 23, 2014 on a month-to-month basis. Rent in the amount of \$1,700.00

was payable on the twenty-third of each month. The tenants remitted a security deposit in the amount of \$850.00.00 at the start of the tenancy. The tenants vacated the rental unit on December 24, 2015.

The parties provided conflicting testimony in relation to the forwarding address. The tenants testified that on January 17, 2016 they provided their forwarding address in writing to the landlord's agent, whereas the landlord denied having an agent and denied receipt of the forwarding address.

The tenants testified that they understood the downstairs occupant was the landlord's agent because they regularly gave the rent cheques to this occupant. The landlord testified that at the time of move-in, the landlord showed the tenants the rental unit, not the downstairs occupant. The landlord denied the tenants paid rent to the downstairs occupant. The landlord testified that the tenants provided post-dated rent cheques to the landlord. The landlord testified that although she lived out of province, the tenants did have her out of province address and phone number.

The landlord testified that the tenants verbally agreed to allow the landlord to retain the security deposit.

Analysis

Section 38 of the *Act* establishes that a landlord has fifteen days from the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an arbitration application claiming against the deposit, or return the deposit. A tenant may waive their right to the return of the security deposit through written authorization to the landlord. In the absence of written authorization from the tenant, the landlord must return the security deposit or file an application within fifteen days. Should the landlord fail to do this, the landlord must pay the tenant double the amount of the security deposit.

When one party provides testimony/evidence of the events in one way and the other party provides an equally probable but different testimony/evidence of the events, then the party making the claim has not meet the burden and the claim fails.

I am satisfied based on the evidence presented, that the downstairs occupant does not constitute an agent and that the landlord did not receive a copy of the tenants forwarding address on January 17, 2016.

During the hearing the tenants confirmed the address for service on the application for dispute resolution as the tenants' correct and current forwarding address. Therefore I

find that the landlord has now been served with the forwarding address and must deal with the deposit pursuant to section 38 of the *Act*. The January 16, 2017 decision date becomes the date the landlord received the tenants forwarding address.

As the tenants were not successful in this application, I find that the tenants are not entitled to recover the \$100.00 filing fee paid for the application.

The tenants' application is dismissed with leave to reapply.

Conclusion

The original decision and the monetary order dated September 28, 2016 are set aside.

The tenant's application is dismissed with leave to reapply.

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: January 16, 2017

Residential Tenancy Branch