



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenants on July 18, 2016 for the return of double their security and pet damage deposits.

The Landlord, the Co-Landlord, and both Tenants appeared for the hearing and provided affirmed testimony. The Landlord confirmed receipt of the Tenants’ Application and their documentary evidence. The Landlord confirmed that he had not provided any evidence prior to this hearing.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided.

Issue(s) to be Decided

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

Background and Evidence

The parties agreed that this tenancy started on April 15, 2016. Rent for the tenancy was \$1,200.00 payable on the first day of each month. The Tenants paid the Landlord a \$600.00 security deposit and a \$300.00 pet damage deposit, both of which are referred to in this Decision as the “Deposits”. The Landlord still retains the Tenants’ Deposits.

The parties confirmed that the tenancy ended at the end of June 2016 and that the Tenants provided their forwarding address to the Landlord by text message. The Landlord confirmed receipt of the Tenant’s forwarding address by text message on July 1, 2016.

The Co-Landlord testified that after the Landlord received the Tenants' forwarding address by text message, he called the Tenants and told them to come by his house and pick up the Deposits which they failed to do. However, the Landlord was not willing to return these to the Tenants at the time of this hearing because the Tenants are alleged to have not paid rent for the last month of the tenancy and caused damage to the rental unit.

The Tenants disputed that the Co-Landlord had called them to collect their Deposits at the end of the tenancy and stated that they had been given permission to withhold rent by the Landlord for the last month of the tenancy. The Tenants denied causing any damage to the rental unit.

Analysis

The Act contains comprehensive provisions on dealing with a tenant's security deposit. Section 38(1) of the Act states that, within 15 days after the latter of the date the tenancy ends, and the 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. Section 38(4) (a) of the Act provides that a landlord may make a deduction from a security deposit if the tenant consents to this in writing. A landlord is required to understand and know of the provisions of the Act when dealing with a tenant's Deposits.

I accept the undisputed evidence that this tenancy ended on June 30, 2016. Section 88 of the Act does not allow for the service of a document by text message. However, Section 71(2) (c) of the Act states that a document may be considered sufficiently served if it is not served in accordance with Section 88 of the Act.

As the Landlord confirmed that he had received the Tenants' text message detailing their forwarding address on July 1, 2016, I find the Landlord was sufficiently notified of this pursuant to the Act. Therefore, the Landlord was required to deal properly with the Tenants' Deposits by July 16, 2016 pursuant to the requirements of the Act. There is no evidence before me that the Landlord made an Application within 15 days of receiving the Tenants' forwarding address or obtained written consent from the Tenants to withhold it. It is also not sufficient for the Landlord to put the requirement and responsibility on the Tenants to visit the Landlord in order to get their monies back. The Act makes it clear that this burden only rests with the Landlord.

Section 38(6) of the Act stipulates that if a landlord does not comply with Section 38(1) of the Act, the landlord must pay the tenant double the amount of the Deposits. Based

on the foregoing, I find the Tenants are therefore entitled to double the return of their Deposits in the amount of \$1,800.00 they claimed.

As the Tenants have been successful in this matter, I also find the Tenants are entitled to the recovery of their \$100.00 filing fee pursuant to Section 72(1) of the Act. Therefore, the Tenants are issued with a Monetary Order for a total of \$1,900.00.

This order must be served on the Landlord if voluntary payment is not made. The Tenants may then file and enforce the order in the Small Claims Division of the Provincial Court as an order of that court. Copies of the order are attached to the Tenants' copy of this Decision.

Conclusion

The Landlord has breached the Act by failing to deal properly with the Tenants' Deposits. Therefore, the Tenants are awarded double the amount and their filing fee for a total of \$1,900.00. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: January 16, 2017

Residential Tenancy Branch