



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the "Act") for authorization to retain the tenants' security deposit pursuant to section 38 and authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants and landlords attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenants confirmed receipt of the landlords' application for dispute resolution package. In accordance with sections 89 of the *Act*, I find that the tenants were duly served with the application.

Preliminary Issue – Monetary Order for Unpaid Rent

Although the landlords' application does not specify a claim for unpaid rent, I am satisfied based on the monetary amount, "details of dispute" box and monetary worksheet that the landlords' application includes a monetary order for three days of unpaid rent in the amount of \$72.60.

Issue(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent?

Are the landlords authorized to retain the tenants' security deposit?

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

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on June 1, 2015 on a month-to-month basis. Rent in the amount of \$750.00 was payable on the first of each month. The tenants remitted a security deposit in the

amount of \$375.00 at the start of the tenancy. The tenants vacated the rental unit on July 3, 2016.

The parties agreed that on July 3, 2016 the tenants authorized the landlords to retain \$25.00 of the security deposit for cleaning of the stove. The parties further agreed that the tenants provided their forwarding address in writing on July 6, 2016.

The landlords seek a monetary order of \$72.60 for unpaid rent from July 1, 2016 to July 3, 2016. The landlords claimed that as per a 2 Month Notice to End Tenancy for Landlord Use ("2 Month Notice"), the tenants were required to vacate the rental unit no later than 1:00 p.m. on July 1, 2016, yet the tenants did not vacate until 5:00 p.m. on July 3, 2016. The landlords testified that the tenants did not pay rent for the above three days.

The landlords are seeking to retain the security deposit in the amount of \$25.00 to offset cleaning of the stove. The landlords are also seeking to recover the \$100.00 filing fee from the tenants.

The tenants testified that because they had possession of the rental unit on June 1, 2015, and did not move in until June 15, 2015 the landlords verbally agreed to allow the tenants to stay past the July 1, 2016 effective vacancy date, without payment of rent.

Analysis

Section 26 of the *Act* requires the tenants to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Regulation* or tenancy agreement must compensate landlords for damage or loss that results from that failure to comply.

I find that the landlords proved that the current rent for this unit is \$750.00. Based on the evidence presented I am satisfied that the tenants did not pay rent from July 1, 2016 to July 3, 2016 and did not have authorization to withhold rent. Therefore, I find that the landlords are entitled to \$72.60 in rent.

Section 38 of the *Act* establishes that landlords have fifteen days from the later of the date the tenancy ends or the date the landlords receive the tenants forwarding address in writing to file an arbitration application claiming against the deposit, or return the deposit. The tenants may waive their right to the return of the security deposit through written authorization to the landlords.

The landlords received the forwarding address on July 6, 2016 and filed an application to retain the deposit on July 20, 2016, which is within the fifteen days allowable under the *Act*. I find that the landlords complied with the requirement under section 38 to make an application to keep the deposit and that the tenants waived their right to the return of \$25.00 of the \$375.00 security deposit through written authorization pursuant to section 38 of the *Act*.

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee for a total award of \$197.60.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain \$197.60 of the \$375.00 security deposit in full satisfaction of the monetary award. The tenants are entitled to the remaining \$177.40 security deposit balance.

Conclusion

The landlords are entitled to \$197.60. I order the landlords to retain \$197.60 from the security deposit in full compensation of this amount. The tenants are entitled to the return of the balance of the security deposit. I therefore grant the tenants a monetary order for the balance of the deposit, in the amount of \$177.40.

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 25, 2017

Residential Tenancy Branch