



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNSD

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on June 22, 2018 (the “Application”). The Tenants applied for the return of the security and pet deposit and reimbursement for the filing fee.

The Tenants appeared at the hearing. The Landlord did not appear at the hearing. I explained the hearing process to the Tenants who did not have questions when asked. The Tenants provided affirmed testimony.

The Tenants confirmed at the outset that they were requesting double the security and pet deposit back if I found the Landlord breached the *Residential Tenancy Act* (the “Act”) or *Residential Tenancy Regulation* (the “Regulations”).

The Tenants had submitted evidence prior to the hearing. The Landlord had not submitted evidence. I addressed service of the hearing package and evidence.

Tenant L.A. testified that the hearing package was served on the Landlord in person at his residence on June 25, 2018. She said both Tenants were present and videotaped this occurring. The Tenants did not submit the video to me. Nor did the Tenants provide any evidence to support that they served the Landlord as described.

Tenant L.A. confirmed that the Tenants did not serve their evidence on the Landlord. The evidence consisted of two cheques. I asked for the Tenants’ position on admission or exclusion of this evidence. I excluded the evidence given it was not served in

accordance with the Rules of Procedure (the “Rules”). I find it would be unfair to admit evidence not served on the Landlord when the Landlord is not present at the hearing to address this issue.

Based on the undisputed testimony of Tenant L.A., I find the hearing package was served on the Landlord in accordance with sections 59(3) and 89(1)(a) of the *Act*.

As I was satisfied of service of the hearing package, I proceeded with the hearing in the absence of the Landlord. The Tenants were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all oral testimony of the Tenants. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Tenants entitled to the return of double the security and pet deposit?
2. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

Tenant L.A. testified that there was a written tenancy agreement in this matter. I asked the Tenants why they did not submit this to me. Tenant L.A. explained that it was lost in their move.

Tenant L.A. testified that the tenancy agreement was between the Landlord and Tenants in relation to the rental unit. I asked what the start date of the tenancy was. At first, the Tenants were unable to tell me. After a lengthy pause, Tenant L.A. said she would need to look this up. She then said she could not remember if it started in 2012 or 2013. She said she thought it started in 2013. She testified that the tenancy started October 1st. Tenant L.A. testified that this was a fixed term tenancy agreement at first and then went month-to-month. I asked how much rent was at the end of the tenancy. The Tenants said it was \$1,850.00. Tenant L.A. then said she thought it was \$1,843.00 and stated that rent was paid through e-transfer. I acknowledge that the Tenants’ evidence was excluded but note that the Tenants did not submit any documentation of these rent payments by e-transfer in any event.

Tenant L.A. testified that the Tenants paid a \$900.00 security deposit and \$900.00 pet damage deposit and that the Landlord still holds these.

Tenant L.A. testified that the Tenants vacated the rental unit June 30, 2016, more than two years ago.

Tenant L.A. testified that the Tenants provided the Landlord with their forwarding address in writing. At first, she said this was done two or three days after the end of the tenancy. She said the letter with the forwarding address was taped to the door of the Landlord's residence. When I confirmed this was done July 2nd or July 3rd, Tenant L.A. then said it was probably done July 5th. She then said it was not actually July 5th but about two days after the 5th.

The Tenants said they took a photo of the forwarding address taped to the door. I asked why they did not submit this photo. Tenant L.A. said the Tenants were hoping things did not get this far.

Tenant L.A. testified as follows. The Landlord did not have an outstanding monetary order against the Tenants at the end of the tenancy. The Tenants did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the deposits. The Landlord did not apply to keep any of the deposits.

Tenant L.A. testified that no formal move-in or move-out inspection was done and that the Tenants were not offered two opportunities to do these inspections.

Analysis

Pursuant to rule 6.6 of the Rules, the Tenants as applicants have the onus to prove their claim.

There is no admissible evidence before me to support the Tenants' testimony that there was a tenancy agreement between them and the Landlord, that they paid the Landlord \$1,800.00 for a security and pet damage deposit or that they provided their forwarding address to the Landlord as and when stated. I did not find the testimony of the Tenants particularly reliable given their uncertainty around details regarding the tenancy and providing their forwarding address.

In the absence of any admissible documentary evidence to support their claim, I am not satisfied the Tenants have met their onus to prove the claim. I therefore dismiss the Application without leave to re-apply.

Conclusion

The Application is dismissed without leave 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 *Act*.

Dated: November 9, 2018

Residential Tenancy Branch