



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNRT, 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 27, 2018 (the “Application”). The Tenants applied for the return of double the security deposit, reimbursement for emergency repairs made and reimbursement for the filing fee.

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

The Tenants had submitted evidence prior to the hearing. The Landlord had not. I addressed service of the hearing package and evidence and no issues arose in this regard.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the parties. 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 deposit?
2. Are the Tenants entitled to reimbursement for emergency repairs made?
3. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement had been submitted as evidence. It is between the Landlords and Tenants in relation to the rental unit. The tenancy started November 15, 2015 and was for a fixed term ending November 14, 2017. The Tenants paid a security deposit of \$1,250.00. The agreement submitted is not signed by the Tenants; however, the parties agreed the Tenants did sign a copy and that the written agreement is accurate.

The parties agreed the Tenants vacated the rental unit May 15, 2018. The Landlord confirmed he still holds the entire security deposit.

The Tenant testified that the Tenants' forwarding address was provided to the Landlord May 20, 2018 by email, June 4, 2018 by mail and June 7, 2018 by mail. The Landlord acknowledged receiving the May 20th email and June 4th letter. The Landlord testified that he received the letter June 9th or 10th.

The parties agreed on the following. The Landlords 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 Landlords could keep some or all of the security deposit. The Landlords did not apply to keep the deposit.

The Tenant testified that no formal move-in inspection was done but that her husband typed up a list of issues with the rental unit.

The Landlord testified that the circumstances were unusual in that the Tenants sold the Landlords the rental unit and then rented it from the Landlords. He said the Tenants' belongings were in the rental unit at the start of the tenancy. The Landlord testified that a structural inspection was done and that the Tenants provided the list of issues upon a walk-through of the house. He said he believed these to be sufficient. The Landlord took the position that both parties participated in a move-in inspection.

The parties agreed no move-out inspection was done. The Landlord testified that the Tenants were not offered two opportunities to do a move-out inspection.

The Landlord testified about why he kept the security deposit. He testified about the timing of an outstanding utility bill and settlement discussions between the parties.

In relation to the request for reimbursement for emergency repairs made, the Tenants sought \$57.30 for a part they ordered to fix the dryer in the rental unit. The Tenants were unable to explain on what basis they were entitled to reimbursement for this amount. The Landlord took the position that he should not have to reimburse the Tenants for this amount.

Analysis

Section 38 of the *Residential Tenancy Act* (the “*Act*”) sets out the obligations of landlords in relation to security deposits held at the end of a tenancy.

Section 38(1) requires landlords to return the security deposit or claim against it within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant’s forwarding address in writing. There are exceptions to this outlined in sections 38(2) to 38(4) of the *Act*. Further, landlords cannot claim against the security deposit for damage to the unit under section 38(1) of the *Act* if they have extinguished their right to claim against the security deposit under either section 24 or 36 of the *Act*.

I find that no move-in inspection was done. I do not accept that the description of the walk-through provided by the Landlord qualifies as a move-in inspection. Further, the Landlord acknowledged no Condition Inspection Report was done.

I find the Tenants did not extinguish their rights in relation to the security deposit under section 24 of the *Act*.

Based on the testimony that no move-out inspection was done, and that the Tenants were not offered two opportunities to do a move-out inspection, I find the Tenants did not extinguish their rights in relation to the security deposit under section 36 of the *Act*.

Based on the testimony of the parties, and my finding that the Landlords did not do a move-in inspection, I find the Landlords did extinguish their right to claim against the security deposit for damage to the rental unit under section 24 of the *Act*.

Based on the testimony of the parties, I find the Landlords received the Tenants’ forwarding address in writing on May 20, 2018. I find email sufficient given the Landlord acknowledged receiving the email. Therefore, May 20, 2018 is the relevant date for the purposes of section 38(1) of the *Act*. The Landlords had 15 days from May 20, 2018 to

repay the security deposit or claim against the deposit for something other than damage to the rental unit.

Based on the testimony of the parties, I find the Landlords did not repay the security deposit or claim against it for something other than damage to the rental unit. Therefore, the Landlords failed to comply with section 38(1) of the *Act*.

Based on the testimony of the parties, I find that none of the exceptions outlined in sections 38(2) to 38(4) of the *Act* apply in this case.

I note that the timing of the outstanding utility bill and settlement discussions between the parties are not relevant to this application. If the Landlords felt that they were entitled to keep any of the security deposit, they were required to apply for dispute resolution claiming against it. The only other option open to the Landlords was to return the security deposit to the Tenants.

Given the Landlords failed to comply with section 38(1) of the *Act*, and that none of the exceptions apply, the Landlords are not permitted to claim against the security deposit and must return double the security deposit to the Tenants pursuant to section 38(6) of the *Act*. Therefore, the Landlords must return \$2,500.00 to the Tenants. I note that there is no interest owed on the deposit as the amount of interest owed has been 0% since 2009.

In relation to the Tenants' claim for \$57.30, the Tenants have the onus to prove the claim pursuant to rule 6.6 of the Rules of Procedure. The Tenants were unable to explain why they were entitled to reimbursement for the amount claimed. I therefore find the Tenants have not met their onus to prove their claim and decline to award them reimbursement for this amount.

As the Tenants were partially successful in this application, I grant them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenants are entitled to a Monetary Order in the amount of \$2,600.00.

Conclusion

The Tenants are entitled to a Monetary Order in the amount of \$2,600.00 and I grant the Tenants a Monetary Order in this amount. This Order must be served on the Landlords

as soon as possible. If the Landlords fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that court.

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 09, 2018

Residential Tenancy Branch