



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on July 12, 2018 (the “Application”). The Landlord sought compensation for monetary loss or other money owed. The Landlord sought to keep the security deposit.

The Tenants appeared at the hearing. The Landlord did not appear. I waited 10 minutes at the outset of the hearing to allow the Landlord to call into the conference and participate in the hearing. The Landlord did not call into the hearing. I proceeded with the hearing in the absence of the Landlord.

The Tenants advised that they want their security deposit back and asked for double the security deposit if I found the Landlord breached the *Residential Tenancy Act* (the “Act”) in relation to the security deposit.

The Tenants provided the correct spelling of the rental unit address and I amended the Application to reflect this. This is also reflected on the front page of this decision.

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

The Landlord had submitted evidence prior to the hearing. The Tenants had not submitted evidence. During the hearing I asked the Tenants if they had received the hearing package and Landlord’s evidence. They advised that they received the hearing package but not the Landlord’s evidence.

Rule 7.3 of the Rules of Procedure addresses the consequences of parties not attending a hearing and states:

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Policy Guideline 17 deals with security deposits and states in part at page two:

The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit; or
- a tenant's application for the return of the deposit.

unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

Given the Landlord failed to attend the hearing, which proceeded for 23 minutes, I dismiss the Application without leave to re-apply.

Pursuant to Policy Guideline 17, I will consider whether the Tenants are entitled to the return of the security deposit.

The Tenants were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all oral testimony of the Tenants. I will only refer to the evidence I find relevant in this decision.

I have not considered the Landlord's evidence as it was not served on the Tenants and the Landlord failed to attend the hearing to present the evidence as required by rule 7.4 of the Rules.

Issue to be Decided

1. Are the Tenants entitled to the return of double the security deposit?

Background and Evidence

Tenant T.B. provided the following testimony.

There was a verbal tenancy agreement between the Landlord and Tenants in relation to the rental unit. The tenancy started September 1, 2016 and was a month-to-month tenancy. The Tenants paid a \$650.00 security deposit. The Tenants vacated the rental unit July 1, 2018. The Landlord still holds the entire security deposit.

The Tenants left their forwarding address on a piece of paper in the kitchen of the rental unit upon vacating on July 1, 2018. The Tenants also sent their forwarding address to the Landlord in a text message on July 2, 2018. The Landlord responded to the text July 2, 2018. Text message was a common form of communication between the Landlord and Tenants during the tenancy.

The forwarding address provided is the address noted on the Application for the Tenants. The Landlord served the hearing package on the Tenants at this address. There is no other way the Landlord would have had their forwarding address other than from the piece of paper left for him or the text message.

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 security deposit.

There was no move-in inspection or move-out inspection done and the Landlord did not offer the Tenants two opportunities to do these inspections. No Condition Inspection Report was completed on move-in or move-out.

Analysis

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the "*Regulations*"). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

I accept the undisputed testimony of Tenant T.B. that no move-in or move-out inspections were done, and that the Landlord did not offer the Tenants two opportunities to do these inspections. Based on this, I find the Tenants did not extinguish their rights

in relation to the security deposit under sections 24 or 36 of the *Act*. Further, I find the Landlord did extinguish his rights in relation to the security deposit under both sections 24 and 36 of the *Act*. However, extinguishment under sections 24 and 36 of the *Act* only relates to claims for damage to the rental unit. Here, the Landlord applied to keep the security deposit in part for an internet bill which is not damage to the rental unit. I find that the Landlord was permitted to apply to keep the security deposit in the circumstances.

Pursuant to section 38(1) of the *Act*, the Landlord was required to repay the security deposit or claim against it within 15 days of the later of the end of the tenancy or receiving the Tenants' forwarding address in writing.

I accept the undisputed testimony of Tenant T.B. that the Tenants provided their forwarding address to the Landlord via text message on July 2, 2018. I also accept that the Landlord responded to the text message and that text message was a common form of communication between the Landlord and Tenants during the tenancy. In the circumstances, I find the text message was sufficient to trigger section 38(1) of the *Act* and that the Landlord received the forwarding address on July 2, 2018.

The Landlord had 15 days from July 2, 2018 to repay the security deposit or claim against it. Based on our records, I find the Landlord claimed against it July 12, 2018, within the 15-day time limit set out in the *Act*. Therefore, I find the Landlord complied with section 38(1) of the *Act* and that the Tenants are not entitled to double the security deposit back.

In relation to the Landlord's claim for \$650.00, this is dismissed without leave to re-apply as the Landlord failed to attend the hearing and provide a basis for his claim.

Therefore, the Landlord must return the \$650.00 security deposit to the Tenants. I note that no interest is owed on the security deposit as the amount owed has been 0% since 2009. The Tenants are issued a Monetary Order for the \$650.00.

Conclusion

The Application is dismissed without leave to re-apply as the Landlord failed to attend the hearing.

The Tenants are not entitled to the return of double the security deposit as the Landlord complied with section 38 of the *Act*.

The Tenants are entitled to the return of the \$650.00 security deposit as the Landlord failed to attend the hearing and provide a basis for his claim to keep the security deposit.

The Tenants are entitled to a Monetary Order in the amount of \$650.00. This Order must be served on the Landlord and, if the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 13, 2018

Residential Tenancy Branch