



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNSD, MNDCT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on January 6, 2022 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order granting the return of the security deposit;
- a monetary order for compensation; and
- an order granting recovery of the filing fee.

The Tenants and the Landlord attended the hearing at the appointed date and time. At the start of the hearing, the Landlord confirmed receipt of the Tenants' Application and documentary evidence. As there were no issues raised, I find these documents were sufficiently served pursuant to Section 71 of the *Act*. The Landlord confirmed that he did not submit any documentary evidence in response to the Application.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Tenants entitled to an order granting the return of the security and pet damage deposits, pursuant to Section 38 of the *Act*?
2. Are the Tenants entitled to a monetary order for compensation, pursuant to Section 67 of the *Act*?

3. Are the Tenants entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties agreed to the following; the tenancy began on August 14, 2020. Rent in the amount of \$1,400.00 was due to the Landlord by the 15th day of each month. The parties agreed that the Landlord collected a security deposit in the amount of \$700.00 as well as a pet damage deposit in the amount of \$400.00 for a total of \$1,100.00 in deposits, which the Landlord continues to hold. The parties also agreed that the Landlord collected \$1,400.00 from the Tenants during the tenancy, which was held in the event that the Tenants failed to pay the last month of rent. The tenancy ended on March 14, 2021.

The Tenants are seeking the return of their security and pet damage deposits totalling \$1,100.00. Following the end of the tenancy on March 14, 2021 the Tenants stated that they sent the Landlord their forwarding address in writing by Canada Post Registered Mail. The Tenants provided a faded copy of a Registered Mail Receipt in support. The Tenants were unable to say when they mailed their forwarding address to the Landlord.

The Landlord stated that he has not yet received the Tenants forwarding address in writing. The Landlord stated that he became aware of the Tenants' change of address as it was included in a previous Dispute Resolution package.

The Tenants are claiming for the return of the \$1,400.00 which was collected by the Landlord from the Tenants, in the event that they did not pay the last month of rent. The parties agreed that the Tenants texted the Landlord on March 4, 2021 indicating that they found a new accommodation and would be vacating the rental unit on March 14, 2021. The Tenants stated that they paid rent to the Landlord on March 14, 2021 which covered their rent up until April 14th, 2021. The Tenants did not provide any evidence in support of the rent being paid to the Landlord from March 14 to April 14, 2021.

The Landlord denied that the Tenants paid him rent on March 14, 2021. The Landlord stated that the last payment of rent received by the Tenants was on February 14, 2021. The Landlord referred to a text message which was sent by the Tenants to the Landlord. The Tenants had included a copy of the text message in their documentary evidence. The text reads in part;

“... We were able to find a cheaper/more spacious place and are able to move in ASAP. How would you feel about just keeping the extra months deposit and we will plan to be moved out by March 15...”

The Landlord responded to the text by stating “*no problem*” and “*ya its up to you*”. As such, the Landlord retained the \$1,400.00 deposit as payment for the last month of rent.

Lastly, the Tenants are seeking compensation in the amount of \$750.00 as the rental unit had the Landlord’s ex-wife’s possessions still in it at the start of the tenancy. The Tenants stated that they took several loads of garbage to the dump, as well as four loads of possessions to storage in order to be able to reside in the rental unit.

The Landlord stated that the parties had agreed that the Tenant would help move one load of possessions to storage to help. The Landlord stated that there was some garbage left outside of the rental unit, and that the Tenant’s father offered to bring it to the dump for the Landlord. The Landlord stated that it was an act of kindness as opposed to a requirement on the Tenants’ part.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

The Tenants are seeking the return of their security and pet damage deposits in the amount of \$1,100.00. Section 38(1) of the Act requires a landlord to repay deposits or make a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant’s forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to comply with section 38(1) of the Act, and does not have authority under sections 38(3) or 38(4) of the Act to withhold any deposits, section 38(6) stipulates that a tenant is entitled to receive double the amount of the security deposit. These mandatory provisions are intended to discourage landlords from arbitrarily retaining deposits.

The Tenants stated that they served the Landlord with their forwarding address in writing, however, could not recall what date it was sent to the Landlord. The Landlord stated that he did not receive the Tenants’ forwarding address, and that he only became aware of their new address as it was included in a previous Dispute Resolution Hearing package.

I find that without clear evidence demonstrating what date the Tenants' sent their forwarding address to the Landlord, I am unable to find that the Landlord was deemed to have been served with the Tenants forwarding address

According to the Residential Tenancy Branch Practice Directive (the "Practice Directive"); A forwarding address provided by the Tenant on the Application for Dispute Resolution form does not meet the requirement of a separate written notice and should not be deemed as providing the landlord with the forwarding address. Additionally Landlords who receive the forwarding address in the Application may believe that because the matter is already scheduled for a hearing, it is too late to file a claim against the Deposits. As such, I find that the Tenant have provided insufficient evidence to demonstrate that the Landlord was sufficiently served with the Tenants' forwarding address.

As the Landlord confirmed that he now has knowledge of the Tenants' forwarding address I find that the Landlord has 15 days from the date of this decision, **September 1, 2022**, to either return the Tenants' deposits in full, or submit an application for Dispute Resolution, should the Landlord feel entitled to retaining some or all of the Tenants' deposits. Should the Landlord fail to take action on or before September 1, 2022 the Tenants are at liberty to reapply for the return of double the amount of their security deposit.

In relation to the monetary compensation sought by the Tenants, Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenants to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenants did what was reasonable to minimize the damage or losses that were incurred.

The Tenants are claiming for the return of \$1,400.00 which the Tenants paid to the Landlord during the tenancy, which was held in the event that the Tenants failed to pay the last month of rent. While no particular Section of the *Act* authorizes the Landlord to do so, I find that based on the Tenants' own evidence, they authorized the Landlord to retain the \$1,400.00 for payment of their last month of rent. I find that the Tenants provided insufficient evidence to demonstrate that they paid rent to the Landlord from March 14, 2021 to April 14, 2021. As such, I find that the Landlord is entitled to retain the \$1,400.00 and dismiss the Tenants' claim for the return of this amount.

Lastly, the Tenants are claiming \$750.00 for the cost associated with dumping loads of garbage to the dump and loads of possessions to a storage unit at the start of the tenancy. In this case, I find that the Tenants provided insufficient evidence to demonstrate that they incurred a loss, or to support the value of their loss. The Tenants confirmed that they did not include any evidence such as dump receipts, storage receipts, pictures of the items disposed of or stored to support their claim. As such, I dismiss this claim without leave to reapply.

As the Tenants were not successful with their Application, I find that they are not entitled to the return of the filing fee.

Conclusion

The Landlord has until **September 1, 2022**, to either return the Tenants' deposits, or submit an application for Dispute Resolution, should the Landlord feel entitled to retaining some or all of the Tenants' deposits. Should the Landlord fail to take action on or before September 1, 2022 the Tenants are at liberty to reapply for the return of double the amount of their security deposit. The Tenants' remaining monetary claims are dismissed without leave to reapply.

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: August 17, 2022