



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNSD, FF

Introduction

This hearing dealt with the tenants' application for return of double the security deposit and pet deposit, plus recovery of the filing fee. Both parties appeared at the hearing and had an opportunity to be heard and respond to other party's submissions.

The landlord requested the hearing be adjourned to permit an in-person hearing be held as he was concerned he would not be understood. I found the landlord to speak fluent English and proceeded with the hearing with the assurance that if the landlord was not understandable he would be asked to repeat or rephrase his testimony. The landlord was agreeable to proceeding with the hearing.

Issue(s) to be Decided

1. Whether the tenants had provided a forwarding address in writing to the landlord at the end of the tenancy.
2. Whether the landlord had the legal right to retain the tenants' security deposit or pet deposit.
3. Whether the landlord is obligated to repay the tenants double the security deposit and/or pet deposit.
4. Award of the filing fee.

Background and Evidence

The parties were in agreement to the following relevant facts. The tenancy began September 1, 2007 and ended July 31, 2008. The tenants had paid a \$675.00 security deposit on August 19, 2007 and a \$500.00 pet deposit on November 2, 2007. The

tenants provided a forwarding address to the landlord, in writing, by depositing it in the landlord's mailbox. The parties did not conduct a move-out inspection of the rental unit together. The landlord did not provide the tenants with a *Notice of Final Opportunity to Schedule a Condition Inspection* prior to the end of the tenancy. The tenants did not authorize any deductions from the security deposit or pet deposit in writing and the landlord did not refund the tenants' security deposit or pet deposit.

I heard testimony that the tenants deposited their forwarding address in the landlord's mailbox on August 12, 2008. The landlord testified that he received the forwarding address in his mailbox near the end of August 2008. The landlord testified that he did not refund the security deposit because the tenants damaged the rental unit, left it unclean and the landlord suffered loss of rent as a result. The tenants objected to the landlord's allegations regarding the condition of the rental unit at the end of the tenancy.

Analysis

As the parties were informed during the hearing, the issues of damage to the rental unit and loss of rental revenue were not issues before me to decide for this proceeding as this hearing was scheduled to hear the tenants' application for dispute resolution and the landlord had not filed his own application for dispute resolution. The landlord is at liberty to make an application for dispute resolution if he wishes to pursue a claim against the tenants for damages or loss. Therefore, the main purpose of this hearing was to determine whether the landlord had a legal right to retain the security deposit under the Act.

The Residential Tenancy Regulation (the Regulation) provides that the landlord must propose a date and time for the move-out inspection and must do so twice, the second time being in the approved form. If the landlord fails to provide this opportunity, or fails to prepare an inspection report, the Act provides that the landlord extinguishes his right to retain the security deposit. I find the landlord extinguished his right to retain the

security deposit by not providing the tenants with the opportunity to participate in a move-out inspection in accordance with the requirements in the Regulation and by not preparing a move-out inspection report and providing it to the tenants. Therefore, the landlord had fifteen days from the later of the date the tenancy ended or the date the landlord received the tenants' forwarding address, in writing, to either file an application for dispute resolution claiming against the deposit, or return the deposit, plus interest, to the tenants.

From the testimony before me, I am satisfied that the tenants met their obligation to provide the landlord with a forwarding address in writing. To give the landlord the benefit of the doubt that he received it near the end of August, I find that the landlord was obligated to either repay the deposit or make application for dispute resolution by September 15, 2008 at the latest possible date. Since the landlord did not fulfill his obligations with respect to returning the security deposit or making an application within 15 days, the landlord must repay the tenant twice the amount of the security deposit and pet deposit, along with accrued interest, pursuant to section 38(6) of the Act.

As the tenants were successful with this application, I also award the tenants the filing fee paid for this application. The tenants are provided with a Monetary Order calculated as follows:

Security deposit x 2	\$ 1,350.00
Pet deposit x 2	1,000.00
Accrued interest on security deposit	11.29
Accrued interest on pet deposit	6.87
Filing fee	<u>50.00</u>
Monetary Order	<u><u>\$ 2,418.16</u></u>

The tenants must serve the Monetary Order upon the landlord and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The tenants are awarded a Monetary Order in the amount of \$2,418.16.

September 30, 2008

Date of Decision