



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This is an Application made by the Tenants for a monetary order for return of double the security and pet damage deposits and the filing fee for the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the 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

Has there been a breach of Section 38 of the *Residential Tenancy Act* (the "Act"), by the Landlords?

Background and Evidence

The parties agree to the following facts: the Tenants paid the Landlords \$600.00 comprised of a security deposit of \$400.00 and a pet damage deposit of \$200.00 on November 5, 2009; the Tenants vacated the rental unit on September 30, 2011; and the Tenants provided the Landlords with a written notice of the forwarding address to return the security deposit to along with the notice to end tenancy they gave to the Landlords, on August 31, 2011.

The Tenants agree they allowed the Landlords to deduct \$80.00 for utilities from the deposit due. The Landlords sent the Tenants a cheque for \$520.00 dated November 10, 2011. The Tenants did not cash the cheque and the appearing Landlord testified he has cancelled this cheque.

The testimony of the Tenants was that the Landlords did not perform incoming or outgoing condition inspection reports.

The appearing Landlord testified that he did not have the deposit money at the end of the tenancy because he spent it due to financial difficulties.

The Landlords testify they had no complaints about the Tenants or the way they left the rental unit.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlords are in breach of the Act.

There was no evidence to show that the Landlords had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenants, to retain a portion of the security deposit or the pet damage deposit.

By failing to perform incoming or outgoing condition inspection reports the Landlords have extinguished their right to claim against the security deposit, pursuant to sections 24(2) and 36(2) of the Act.

The Landlords have breached section 38 of the Act. The Landlords are in the business of renting and therefore, have a duty to abide by the laws pertaining to Residential Tenancies.

The security and pet damage deposits are held in trust for the Tenants by the Landlords. At no time do the Landlords have the ability to simply keep the deposits or to spend them.

The Landlords may only keep all or a portion of the deposits through the authority of the Act, such as an order from a Dispute Resolution Officer, or the written agreement of the Tenants.

Here the Landlords did not have any authority under the Act to spend any portion of the deposits. Therefore, I find that the Landlords must return double the security and pet damage deposits to the Tenants, and pay the filing fee for the Application.

Conclusion

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlords pay the Tenants the sum of **\$1,170.00**, comprised of double the pet damage and security deposits (2 x \$600.00), the \$50.00 fee for filing this Application, less the \$80.00 for utilities the Tenants agree the Landlords may keep.

The Tenants are given a formal Order in the above terms and the Landlords must be served with a copy of this Order as soon as possible. Should 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 final and binding, except as provided under the Act, and 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: February 07, 2012.

Residential Tenancy Branch