



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This is an application by the tenants for a monetary order for return of double the security deposit and pet deposit, and the filing fee for the claim.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on May 30, 2012, a Canada post track history was provided in evidence, which indicates on June 1, 2012, a signatory name of (N.L) was recorded as receiving the package, the signatory was identified by the tenants as an employee of the landlord. The landlord did not appear. I find that the landlord has been duly served in accordance with the Act.

The tenants gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for return of double the security and pet deposit?

Background and Evidence

The tenant paid a security deposit of \$475.00 and a pet deposit of \$475.00 at the start of tenancy which began on September 1, 2010. The tenants vacated the premises on April 25, 2012. At the move-out inspection the tenants provided the landlord with written notice of their forwarding address to return the security deposit and pet deposit to, and did not sign over a portion of the either deposits.

The tenants stated on May 18, 2012, their pet deposit was returned, and the enveloped was postmarked May 14, 2012, which was not within 15 days of tenancy ending.

The tenants stated they are seeking the return of double the security deposit and pet deposit.

Analysis

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

There was no evidence to show that the tenant had agreed, in writing, that the landlord could retain any portion of the security or pet deposit.

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

The landlord has breached section 38 of the Act. The landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies.

The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from a Dispute Resolution Officer. Here the landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the landlord is not entitled to retain any portion of the security deposit or interest.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit and pet deposit. The legislation does not provide any flexibility on this issue.

Conclusion

Having made the above findings, I must order, pursuant to section 38 and 67 of the Act, that the landlord pay the tenants the sum of \$1,950.00, comprised of double the pet deposit (\$475.00) and security deposit (\$475.00) on the original amounts held and the \$50.00 fee for filing this Application. The landlord has returned to the tenants the pet deposit in the amount of \$475.00. Therefore, I grant the tenants a monetary for the balance due of **\$1,475.00**.

The tenant is given a formal order in the above terms and the landlord must be served with a copy of this order as soon as possible. Should the landlord 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 *Residential Tenancy Act*.

Dated: July 25, 2012.

Residential Tenancy Branch