



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, RPP, O, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the tenants for a monetary order for return of all or part of the pet damage deposit or security deposit; for an order that the landlord return the tenant's personal possessions; for a monetary order for recovery of costs associated with sending registered mail to the landlord; and to recover the filing fee from the landlord for the cost of the application. The details section of the application states that the tenants claim double the amount of the security deposit.

An agent for the landlord company and both tenants attended the conference call hearing. Each of the parties gave affirmed testimony and the tenants provided evidentiary material in advance of the hearing. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of the application for dispute resolution, notice of hearing or evidence were raised.

Issue(s) to be Decided

- Have the tenants established a claim as against the landlord for return of all or part of the pet damage deposit or security deposit, or double the amount of such deposits?
- Have the tenants established a claim as against the landlord for return of personal possessions belonging to the tenants?

Background and Evidence

The first tenant testified that this fixed term tenancy began on November 1, 2011 and expired on May 1, 2012 and the tenancy agreement stated that at the end of the fixed term, the tenancy reverts to a month-to-month tenancy, although a copy of that agreement was not provided for this hearing. Rent in the amount of \$825.00 per month was payable in advance on the 1st day of each month and there are no rental arrears.

At the outset of the tenancy, the landlord collected a security deposit from the tenants in the amount of \$400.00 which is still held in trust by the landlord, and no pet damage deposit was collected. No move-in or move-out condition inspection reports were completed at the beginning or the end of the tenancy. The tenants ultimately moved out of the rental unit on June 30, 2012.

The tenant further testified that the landlord's agent told the tenants during the first part of April, 2012 that they had to move out at the end of the fixed term or they would be forced out because the landlord wanted to increase the rent. The landlord's agent stated that the landlord would find a way to kick the tenants out by selling the rental unit to another member of the company. The tenant contacted the Residential Tenancy Branch and learned that the landlord could not do what the landlord's agent had told them and that the tenants were entitled to 2 months notice and the equivalent of one month's rent. The tenants asked the landlord's agent when they had to move out and they were told within 2 months. The landlord's agent gave the tenants a Mutual Agreement to End the Tenancy and all parties signed it. The landlord's agent did not give the tenants a 2 Month Notice to End the Tenancy for Landlord's Use of Property, but did give the tenants a free month of rent.

The tenants left the rental unit on June 15, 2012 but returned to the rental unit to clean, which was finished before the end of June, 2012.

The tenants contacted the landlord, leaving multiple messages asking for the return of the security deposit, and the landlord's agent told the tenants to take the landlord to Court.

The tenant further testified that the landlord has not served the tenants with an application for dispute resolution by the landlord.

On July 18, 2012 the tenants sent a letter to the landlord by registered mail at the address on the tenancy agreement stated to be the landlord's address, requesting the security deposit, and provided a copy of the registered mail receipt to substantiate that testimony. The landlord has not returned the security deposit.

The tenant further testified that the tenants had obtained the permission of one of the landlord's agents to store patio furniture at a location on the rental property and another tenant advised that the landlord's agent had asked the other tenant if the furniture belonged to that tenant but did not ask these tenants, and the patio furniture was disposed of, although no evidence to substantiate that testimony has been provided.

The other tenant testified that when the parties signed the Mutual Agreement to End Tenancy the landlord's agent told the tenants that a copy would be sent to them, but they never received one.

The landlord's agent testified that on April 14, 2012 the Mutual Agreement to End Tenancy was signed by the parties and the address for the landlord is on that document. However, the landlord's agent testified that the landlord's agent attended at the rental unit with 2 copies of a Mutual Agreement to End Tenancy and each of the parties signed both copies. A copy of that agreement was not provided for this hearing, but the landlord testified that the correct address of the landlord is on that form and one of the copies was left with the tenants. The landlord's agent wrote, "\$400 security deposit and \$100 pet damage deposit."

The landlord's agent does not know where the address came from that is on the tenancy agreement because the landlord's agent was not an agent for the landlord at that time. The address is actually that of a gym that the landlord's agent attends. The landlord's agent received the tenant's application for dispute resolution and notice of hearing documents a couple of weeks after July 18, 2012 from a member of the gym, who signed for the package; the landlord's agent was away for about 3 months. The landlord's agent agrees that the address on the tenancy agreement is the address the tenant had described as being the address that the tenants sent the forwarding address to. The landlord's agent then testified that the documents were received sometime in August or September, 2012.

Analysis

The *Residential Tenancy Act* provides that a landlord must return a security deposit in full or apply for dispute resolution to keep any portion of it within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. If the landlord fails to do either, the landlord must repay the tenant double the amount of such security deposit or pet damage deposit or both. The *Act* also provides that documents sent by registered mail are deemed to have been received 5 days after mailing. The tenants have provided evidentiary material of the registered mail, and have testified that the forwarding address of the tenants and request for return of the security deposit was in that registered mail package sent to the landlord on July 18, 2012. The address it was sent to was the address of the landlord listed on the tenancy agreement. The landlord's agent did not dispute that testimony but testified that the address is not the address of the landlord.

In the circumstances, I find that the landlord obtained the forwarding address of the tenants in writing, which was deemed to have been received by the landlord on July 23, 2012. I accept the testimony of the landlord's agent that the registered mail was received by a gym, and the personnel at the gym forwarded it on to the landlord's agent, but at one point the landlord's agent testified that the documents were received were the Tenant's Application for Dispute Resolution and notice of hearing, and then testified that the tenants' forwarding address was in that envelope. Regardless, the parties agree that the address the forwarding address was sent to was the address on the tenancy agreement as being the address for the landlord, and I find that the tenants have served the landlord with the forwarding address as required by law. The landlord's agent did not return the tenants' security deposit, and therefore, the landlord must be ordered to pay double the amount of the security deposit, or \$800.00.

The landlord's agent testified that the landlord also collected a pet damage deposit from the tenants in the amount of \$100.00, but the tenants do not agree. Therefore, I find that the tenants are not entitled to double recovery or any recovery of a pet damage deposit.

The tenants did not raise a claim for return of personal property during the hearing, other than to state that patio furniture was disposed of by the landlord but provided no evidence to substantiate that testimony, and I dismiss that portion of the tenants' application.

The *Residential tenancy Act* also provides that filing fees are recoverable by dispute resolution, but does not specify any other costs associated with dispute resolution. Since the tenants have been partially successful with the application, the tenants are entitled to recovery of the \$50.00 filing fee for the cost of the application, but no further costs are recoverable.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$850.00.

This order is final and binding on the parties and may be enforced.

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: November 14, 2012.

Residential Tenancy Branch