



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants for a monetary order for return of the security deposit or pet damage deposit and to recover the filing fee from the landlord for the cost of the application. The tenants' application claims \$1,325.00, being double the amount of the security deposit.

The landlord and one of the tenants attended the conference call hearing and both gave affirmed testimony. The parties provided evidentiary material in advance of the hearing to each other and to the Residential Tenancy Branch. 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 documents or evidence were raised.

Issue(s) to be Decided

Have the tenants established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit?

Background and Evidence

The parties agree that this tenancy began on January 8, 2012 and ended on August 30, 2012. Rent in the amount of \$1,325.00 per month was payable in advance on the 1st day of each month and there are no rental arrears. The parties also agree that the landlord collected a security deposit from the tenants in the amount of \$662.50 at the outset of the tenancy, and no pet damage deposit was collected. The parties also agree that the landlord received the tenants' forwarding address in writing on August 30, 2012.

The tenant testified that the landlord returned \$292.49 of the security deposit to the tenants about 2 weeks after the tenancy ended. The tenant does not agree that the landlord was entitled to keep any portion of the security deposit. The tenant further

testified that no move-in or move-out condition inspection reports were completed. The tenants did not consent to the landlord keeping any portion of the security deposit and the tenants claim double the amount.

The landlord testified that the tenants took occupancy of the rental unit on January 8, 2012 but the tenant's spouse and the tenants' furniture arrived at the rental unit sometime later, and therefore, the landlord had no opportunity to complete the move-in condition inspection report. Further, the tenants didn't afford the landlord an opportunity to complete a move-out condition inspection report at the end of the tenancy.

The landlord also testified that there were minor damages to the rental unit and the rental unit was not left reasonably clean. The landlord sent the tenants a cheque by regular mail on September 4, 2012 in the amount of \$292.49 along with a list of damages claimed by the landlord setting out why the landlord did not return the full amount.

Analysis

The *Residential Tenancy Act* states that a landlord must return a security deposit or pet damage deposit in full to a tenant or make an application for dispute resolution to keep either deposit 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 be ordered to pay the tenant double the amount of such deposits.

The *Act* also states that if a landlord fails to provide a tenant with at least two opportunities to complete move-in and move-out condition inspection reports, and the onus is on the landlord, the landlord's right to claim against a security deposit or pet damage deposit for damages is extinguished. In that scenario, a landlord may make a claim against the security deposit for unpaid rent or utilities, but not for damages. If there is no outstanding rent or utilities payable under the tenancy agreement, the landlord has only one option left, and that is to return the security deposit in full to the tenant.

In this case, the parties agree that the tenancy ended on August 30, 2012 and the landlord received the tenants' forwarding address in writing on that date.

Because the landlord did not cause the inspection reports to be completed, I find that the landlord's right to claim against the security deposit for damages is extinguished. I further find that the landlord did not return the security deposit in full to the tenants

within the 15 days provided by the *Act*, and therefore, the landlord must be ordered to pay double.

The parties agree that the landlord has returned the sum of \$292.49 of the \$662.50 security deposit. I therefore order the landlord to pay \$1,325.00, less the \$292.49 which has already been returned to the tenants, for a total of \$1,032.51. Since the tenants have been successful with the application, the tenants are also entitled to recover the \$50.00 filing fee for the cost of the application.

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 \$1,082.51.

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: December 07, 2012.

Residential Tenancy Branch