



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the tenants application for double the security and pet deposit; and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlords agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Are the tenants entitled to a Monetary Order to recover double portion of the security deposit?

Background and Evidence

The parties agree that this tenancy started on April 01, 2008 for a fixed term of one year and then reverted to a month to month tenancy until September 30, 2012. Rent for this unit was \$2,350.00 per month and was due on the 1st day of each month. The tenants'

paid a security deposit of \$1,175.00 on March 15, 2008 and a pet deposit of \$1,175.00 on April 01, 2008.

The tenant attending testifies that no move in or move out condition inspection reports were completed by the landlord at the start or end of the tenancy. The tenant testifies that they gave the landlord their forwarding address in writing on October 01, 2012. The landlord sent a cheque to the tenants for \$3,370.00 which included the sum of \$1,095.00 in compensation from the landlord for the tenants' loss of the rental unit for two weeks while construction was taking place. The tenant testifies that the landlord had addressed the envelope to the wrong address but the tenants did receive this portion of the security and pet deposit. The cheque was dated for October 12, 2012 and although it was sent within 15 days the landlord had deducted the sum of \$75.00 for a mailbox key. The tenant testifies that they did not authorise the landlord to make this deduction and they had in fact returned the mail box key to the landlord at the end of the tenancy.

The tenant testifies that correspondence took place between the landlord and tenants regarding the mailbox key and the landlord's obligation to return all the security deposit within 15 days. The tenant also notified the landlord that there is interest due on the security deposit.

The tenant testifies that they did not receive a second cheque for the mail box key deduction or the accrued interest until February, 2013. This cheque is for \$103.10. The tenant testifies that as the landlord did not return all the security deposit and interest within 15 days the tenants seek to recover double the security deposit and interest less the amounts already paid.

The landlord's agent testifies that the landlord's financial coordinator had sent the original cheque in good faith to the tenants for \$3,370.00. Although there was a typo error on the address in the USA the tenants did receive this payment and cashed the cheque. The landlord then decided not to pursue the tenants for the cost of the mail box key as the tenants may have already returned the key so the landlord sent a second

cheque to the same address as the first cheque in good faith on October 23, 2012 however the tenants did not receive that cheque and the letter was returned to the landlord and marked as no such number.

The landlord's agent testifies that as soon as they received the tenant's new address in Canada they sent the tenants another cheque for the sum of \$103.10. The landlord's agent testifies that the landlord has always acted in good faith in returning the security deposit.

Analysis

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security and pet deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security and pet deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security and pet deposit to the tenant.

Based on the above and the evidence presented I find that the landlord did receive the tenants forwarding address in writing on October 01, 2012. As a result, the landlord had until October 16, 2012 to return the tenants security and pet deposit or file an application to keep them. I find the landlord did not return all of the security and pet deposit within the allowable 15 days and could not file an application to apply to keep the deposits as the landlords failure to complete a move in or move out condition inspection report in accordance with s.23 and 35 of the *Act* resulting in the landlord extinguishing their right to file a claim against either deposit.

Even if the landlord's first cheque had been received by the tenants it was still sent outside the 15 day time line established under s. 38 of the *Act*. Therefore, I find that the tenants have established a claim for the return of double the security and pet deposit

plus accrued interest less the amount already returned pursuant to section 38(6)(b) of the *Act*.

As the landlord has returned the amount of \$2,378.10 I find this amount will be deducted from the tenants claim. The tenants are also entitled to recover the **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*. The tenants will receive a Monetary Order for the amount of:

Double the security and pet deposit	\$4,700.00
Accrued interest on the original amount only	\$27.30
Subtotal	\$4,727.30
Less amount already paid	(-\$2,378.10)
Plus the filing fee	\$50.00
Total amount due to the tenants	\$2,399.20

Conclusion

I HEREBY FIND in favor of the tenants' monetary claim. The tenants claim has been adjusted to show that accrued interest is only payable on the original amount of a security and pet deposit. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$2,399.20**. The order must be served on the respondent and is enforceable through the Provincial Court 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: February 28, 2013

Residential Tenancy Branch

