



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 return of all or part of the pet damage deposit or security deposit and to recover the filing fee from the landlord for the cost of the application.

Both tenants attended the conference call hearing and gave affirmed testimony, however, despite being served with the Tenant's Application for Dispute Resolution and notice of hearing documents by registered mail on December 19, 2012, the landlord did not attend. The line remained open while the phone system was monitored for 10 minutes and the only participants who joined the hearing were the tenants. The tenants provided testimony and evidence of having served the landlord on that date and in that manner, and I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

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

Background and Evidence

The first tenant testified that this fixed term tenancy began on July 1, 2010 and expired on June 30, 2011 at which time the tenancy reverted to a month-to-month tenancy, which ultimately ended on October 31, 2012. Rent in the amount of \$2,300.00 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 in the

amount of \$1,150.00 as well as a pet damage deposit in the amount of \$1,150.00 from the tenants.

The tenant further testified that on October 31, 2012 the parties completed a move-out condition inspection report and the landlord sent a copy to the tenants along with a cheque in the amount of \$1,775.00, being partial return of the security and pet damage deposits. The cheque and the move-out condition inspection report were received by the tenants on December 20, 2012.

On December 14, 2012 the tenant had sent an email to the landlord containing the tenants' forwarding address, but the landlord did not respond. On March 7, 2013 the landlord inadvertently sent the tenant an email along with several other people on a distribution list, so the tenant knows the email account of the landlord is still operable.

The cheque that the landlord sent to the tenants was subsequently returned by the financial institution for insufficient funds.

The other tenant testified that the landlord spoke mostly to that tenant during the move-out condition inspection and told the tenant that full deposits would be returned within 14 days along with a copy of the move-out condition inspection report, but nothing was received. The tenant called the landlord, leaving messages on the landlord's voice mail on 3 separate occasions, but the landlord did not respond.

The tenant further testified that the tenant saw the report after the other tenant had signed it, and the copy received by the tenants has markings added after the tenant had signed.

The tenant also testified that the landlord was told of the tenants' forwarding address during the move-out condition inspection, and the tenant pulled out a new drivers' licence that contained the new address to confirm that it was the correct address and ensured that the landlord wrote it down correctly.

The tenants have also provided copies of emails exchanged between the parties. The first is an email dated November 29, 2012 from the landlord which states that the landlord had received the tenant's voice message request but was away until December 10, 2012 and that the deposit had been mailed to the tenants on November 14, 2012. The next email is dated December 11, 2012 from the landlord to the tenants stating that the landlord had sent a cheque the same day via registered mail and the original cheque was lost. The tenants responded on December 14, 2012 stating that there are no registered letters.

The tenants apply for double recovery of both deposits.

Analysis

Section 38 of the *Residential Tenancy Act* states that within 15 days after the later of the day the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and any pet damage deposit to the tenant or make an application for dispute resolution to claim the deposit. Section 38(6) provides that If a landlord does not comply with the *Act* by refunding the deposit owed, or making application to retain it within 15 days, the landlord may not make a claim against the security deposit or any pet damage deposit, and must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

In this case, I find that the landlord collected \$1,150.00 for a security deposit and \$1,150.00 for a pet damage deposit. The tenant watched the landlord write the tenants' forwarding address in a notebook, and ensured that it was correctly written, and compared it to a new drivers' licence which contained the new address. I find that the tenants provided a forwarding address in writing on October 31, 2012.

Because the landlord failed to follow the *Act* by retaining the funds being held in trust for the tenants, the tenants are entitled to compensation equal to double the deposits, amounting to \$4,600.00.

Since the tenants have been successful with the application, the tenants are also entitled to recovery of the \$50.00 filing fee for the cost of this 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 \$4,650.00.

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: March 19, 2013

Residential Tenancy Branch

