



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 in repose to the tenants' application for the return of double the security deposit and to recover the filing fee from the landlords for the cost of this application.

The tenants and one of the landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlords and tenants 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 recover double the security deposit?

Background and Evidence

The parties agree that this month to month tenancy started on May 01, 2012. Rent for this unit was \$1,150.00 per month due on the 1st day of each month plus 60 percent of utilities. There were three tenants living in this unit and they paid a security deposit of \$575.00 and a pet deposit of \$200.00 on April 15, 2012. The tenancy ended on January 01, 2013.

The tenants who have filed this application testify that they gave the landlord their forwarding address in writing on the move out condition inspection report on January 02, 2013. The tenants' testify that the landlords had said that there were no damages and everything was good and the condition report reflects this. The tenants' testify that they did not give their permission in writing to the landlords to keep all or part of the security or pet deposits. The tenants testify that as the landlords did not return the security or pet deposits the tenants attending the hearing put a final request for the deposits on the landlord's door on January 21, 2013. The tenants testify that they received a cheque from the landlords for the sum of \$587.27 on February 27, 2013. The cheque is dated for February 19, 2013 and a copy of this has been provided in evidence.

The tenants testify that they filed their application for double the security and pet deposits on February 18, 2013. The tenants seek to recover double the security and pet deposits less the amount already returned to them as the landlords had not returned the security and pet deposits within 15 days.

The landlord attending testifies that the tenants had agreed that the landlords could keep the security and pet deposits until the landlords received the final utility bills for the unit. The landlord testifies that the balance of the security and pet deposits would then be returned to the tenants. The landlord testifies that the utility companies wanted to charge the landlords an additional amount to provide the utility bills out of cycle and as the landlords did not want to incur these charges the landlords informed the tenants that they would return the balance of the deposits when the bills came in. The landlord testifies that the tenants verbally agreed to this. The landlord testifies that as soon as the landlords received the utility bills they calculated the tenants share to be \$187.73 and returned the balance of \$587.27 to the tenants on February 19, 2013. The landlord testifies that the tenant MB had signed the move out condition inspection form to agree to the security and pet deposits being withheld until the utility bills came in

The tenant disputes that they gave the landlord written permission to keep the security or pet deposit and states they have not signed the move out condition inspection form.

The landlord agrees the form was only initialled by one of the tenants MB but the other tenant IA agreed verbally to this. The landlord testifies that the third tenant who paid a share of the security deposit is not part of this application and this shows that he does not agree to the tenants claiming double 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 the landlords did receive the tenants' forwarding address in writing on January 02, 2013. There is no evidence before me that the tenants agreed the landlord could keep all or part of the security or pet deposits as simply gaining one tenant's initials on a move out condition inspection form without specifying an amount that the landlords may keep is not sufficient permission under the *Act*. Therefore, the landlords had until January 17, 2013 to return the tenants' security and pet deposits or file an application to keep them. I find the landlords did not return the security and pet deposits in full and have not filed an application to keep them. Therefore, I find that the tenants have established a claim for the return of double the security and pet deposits to the sum of **\$1,550.00** pursuant to section 38(6)(b) of the *Act*. As the landlords have returned the sum of **\$587.27** on February 19, 2013 this amount will be deducted from the tenants' monetary award.

As the tenants have been successful with this application I find the tenants are entitled to recover the **\$50.00** filing fee from the landlords pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the tenants for the following sum:

Double the security and pet deposits	\$1,550.00
Filing fee	\$50.00
Less amount returned after the 15 days	(-\$587.27)
Total amount due to the tenants	\$1,012.73

Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$1,012.73**. The Order must be served on the respondents 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: May 14, 2013

Residential Tenancy Branch

