



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

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

One of the tenants and landlord attended the conference call hearing and gave sworn testimony. The landlord and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. 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 the double the security and pet deposit?

Background and Evidence

The parties agree that this tenancy started on March 01, 2012 for a fixed term that ended on February 29, 2013. The tenancy then reverted to a month to month tenancy. The tenancy ended on August 01, 2013. Rent for this unit was \$850.00 per month and was due on the first day of each month. The tenants paid a security deposit of \$425.00 on February 29, 2012 and a pet deposit of \$300.00 by May 30, 2012.

The tenants testify that the landlord did not complete a move in condition inspection with the tenants at the start of the tenancy. The tenants did a deficiency list and e-mailed that to the landlord. At the end of the tenancy the landlord's representative did a move out inspection however did not complete a proper report which contained space for the tenant to disagree with the findings or to provide a forwarding address. The tenant testifies that they provided a forwarding address to the landlord over the phone on August 03, 2013 and the landlord responded to this address and sent the tenants a letter (copy provided) on August 07, 2013. The tenant states that in sending this letter and using the address provided for all further correspondence the landlord has shown that she did receive the tenants' forwarding address.

The tenant testifies that the landlord has retained all of the security and pet deposit without permission of the tenants. The tenants therefore seek to recover double the security and pet deposits to the amount of \$1,450.00.

The landlord disputes the tenants claim. The landlord testifies that there is a clause in the tenancy agreement signed by the tenants at the start of the tenancy that allows the landlord to keep all or part of the security and pet deposit for unpaid rent or damages to the unit. The landlord testifies that as the tenants did leave damage to the unit the landlord has kept the security and pet deposit as per the tenancy agreement.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to section 23(4), of the *Residential Tenancy Act (Act)* that requires a landlord to complete a condition inspection report at the beginning of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign the condition inspection report. In failing to complete the condition inspection report when the tenants moved in, I find the landlord contravened s. 23(4) of the *Act*. I further find that the move out report was not completed using an a form which complied with s. 20 of the Residential Tenancy Regulations. Consequently,

s. 24(2)(a) of the *Act* says that the landlord's right to claim against the security or pet deposit for damages is extinguished. Therefore the landlord must ensure that the security and pet deposits are returned to the tenants.

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 by phone and responded to that address by mailing documents to the tenants. Consequently, the parties have established that an address was given to the landlord for the purposes of the *Act* on August 03, 2013. As a result, the landlords had until August 18, 2013 to return the tenants security and pet deposit as the landlord has extinguished their right to make a claim against either deposit. I find the landlord did not return the security or pet deposit. I further find that any term written in a tenancy agreement at the start of tenancy concerning the landlord's right to keep the deposits is deemed to be an unconscionable term of the agreement. Therefore, I find that the tenants have established a claim for the return of double the security and pet deposit to the amount of **\$1,450.00** pursuant to section 38(6)(b) of the *Act*.

The tenants are also entitled to recover the **\$50.00** filing fee from the tenants pursuant to s. 72(1) of the *Act*

Conclusion

I HEREBY FIND in favor of the tenants' monetary **claim**. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,500.00**. The Order must be served on

the respondent. Should the respondent fail to comply with the Order the Order may be enforced 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: November 28, 2013

Residential Tenancy Branch

