



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This is an application filed by the tenant for a monetary order for the return of the pet damage and/or security deposit.

Both parties attended the hearing by conference call and gave testimony. The landlord has confirmed receipt of the notice of hearing package and the tenant's submitted documentary evidence. The tenant states that as of the date of this hearing he has not received any documentary evidence from the landlord. The landlord states that she sent the submitted late documentary evidence to the Residential Tenancy Branch and the tenant on August 20, 2014, two days before the hearing. The package to the Branch was hand delivered and the package to the tenant was sent by Canada Post Registered Mail. I find in reviewing the landlord's evidence that there would be no prejudice to the tenant and on a limited basis will allow the landlord's late evidence subject to any objections made by the tenant. It was clarified with both parties that when the landlord made reference to any of their submitted documentary evidence that the contents would be described in detail to the tenant who would be allowed an opportunity to object, if necessary. The hearing proceeded with both parties submitted documentary evidence.

Issue(s) to be Decided

Is the tenant entitled to a monetary order?

Background and Evidence

This tenancy began on December 1, 2013 on a fixed term tenancy ending on March 31, 2014 and then ends as shown by the submitted copy of the signed tenancy agreement. The total rent of \$28,000.00 was payable in advance, on or before the 1st day of the

tenancy. A pet damage deposit of \$3,500.00 and a security deposit of \$3,500.00 were paid.

Both parties agreed that the tenancy ended on March 31, 2014 and the landlord withheld \$4,000.00 of the combined deposits and that the landlord returned \$3,000.00 of the combined deposits 17 days after the end of the tenancy deducting costs for cleaning and hydro without the permission of the tenants. The tenant states that the forwarding address in writing was provided to the landlord on March 28, 2014 via a text to the landlord's agent, "Cal". The landlord disputes this stating that no forwarding address in writing was received until the landlord received the tenant's application for dispute resolution. The tenant stated that he had proof of the text message, but did not provide it for this hearing.

The tenant seeks a monetary claim of \$4,000.00 for the return of the withheld portion of the combined deposits.

Analysis

Section 38 of the Residential Tenancy Act states,

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

(a) **the date the tenancy ends, and**

(b) **the date the landlord receives the tenant's forwarding address in writing,**

the landlord must do one of the following:

(c) **repay**, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) **make an application for dispute resolution claiming** against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) *[service of documents]* or give the deposit personally to the tenant.

It is clear based upon the undisputed evidence of both parties that the tenancy ended on March 31, 2014 and that the landlord failed to return the combined pet damage and security deposits of \$7,000.00 by withholding \$4,000.00 in dispute over cleaning and a hydro bill. The landlord stated that no permission was given by the tenant, nor did the

landlord file an application for dispute resolution claiming against the deposits. The tenant has established a claim for the return of the withheld portion of \$4,000.00. However, the tenant has failed to provide sufficient evidence to satisfy me that the landlord was properly served with the tenant's forwarding address in writing for the return of the pet damage and security deposits. The tenant is not entitled to compensation under section 38 (6) of the Act.

The tenant is granted a monetary order under section 67 for the return of the withheld portion, totalling, \$4,000.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant is granted a monetary order for \$4,000.00.

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: August 22, 2014

Residential Tenancy Branch

