



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNSD, FF
 Tenants: MNSD, MNDC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking a monetary order. The hearing was conducted via teleconference and was attended by the landlord and both tenants.

The landlord testified each tenant was served with the notice of hearing documents and his Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on September 12, 2014 in accordance with Section 89. As per Section 90, the documents are deemed received by the tenants on the 5th day after they were mailed.

The tenants submitted that they had not received the landlord's Application and with approval of both parties I verified on Canada Post's website that the packages had been mailed to the address identified as the tenant's forwarding address and that they were returned to the landlord.

The tenants were adamant in their testimony that the address given was their parents and that there is no way that their parents would have returned any mail to the landlord but rather they would have sent it on to the tenants.

The landlord's Application was to retain the security and pet damage deposits and the tenants' Application was for return of double the amount of the security and pet damage deposits. As both Applications dealt with the disposition of the security and pet damage deposits and both parties were prepared to deal with this issue I find the tenants are not prejudiced by failing to receive the landlord's Application. As such, I have considered both the landlord's and the tenants' Applications.

Right from the start of the hearing the female tenant was aggressive and would not listen to my direction to remain silent while I was outlining the process and hearing from the landlord. As such, I was required to place the tenants on mute once. I cautioned the tenants on numerous occasions that they must abide by the rules and conduct themselves in an appropriate manner or I would either mute them again or I would cut

them out of the hearing all together. While their interruptions continued throughout the hearing they did lessen and I was able to proceed with the hearing.

I note as well that while the male tenant did not provide any direct testimony he continued to make comments throughout the hearing that included repeatedly saying that "it doesn't matter – we're going to take it to Supreme Court".

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for to retain all or part of the security and pet damage deposits and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

It must also be decided if the tenants are entitled to a monetary order for double the amount of the security deposit and pet damage deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The parties agreed the tenancy began as a 1 year fixed term tenancy beginning on February 1, 2014 for a monthly rent of \$970.00 due on the 1st of each month with a security deposit of \$485.00 and a pet damage deposit of \$100.00 paid. The parties agree the tenancy ended on or before April 8, 2014.

Both parties acknowledge they have been involved in a number of hearings before Residential Tenancy Branch Arbitrators. The landlord had obtained on March 17, 2014 a monetary order in the amount of \$970.00. The parties acknowledge the tenants sought Review Consideration on the ground of fraud on the decision that granted that order. A new hearing was held on May 21, 2014 in which the original decision and order were confirmed.

The tenants continue to assert the landlord obtained the decisions and orders and they say they intend to take those decisions to the Supreme Court because of their fraud assertions. The tenants did not provide any evidence to this hearing regarding fraud.

The parties agree the landlord has not received any payment from the tenants in regard to the order issued on May 17, 2014. The tenants submit the landlord has not served them with the monetary order.

Analysis

I note that while the tenants indicated that they intended to take some of the previous decisions and orders to Supreme Court they confirmed during the hearing that they had not yet filed their claim with Supreme Court.

Section 38(3) stipulates that a landlord may retain from a security deposit or a pet damage deposit an amount the director has previously ordered the tenant to pay to the landlord and at the end of the tenancy remains unpaid.

As the landlord has been issued a monetary order prior to the end of the tenancy and from the testimony of both parties the tenants have not paid any amounts towards that award I find the landlord is entitled to retain both the security deposit and pet damage deposits and apply these amounts to the outstanding monetary order.

As Section 38(3) allows the landlord to automatically retain this amount I find the landlord was not required to submit an Application for Dispute Resolution to claim against the deposit.

As the landlord was not required to submit an Application for Dispute Resolution I find the tenants are not entitled to doubling the amount of the security deposit.

Conclusion

Based on the above, I dismiss the tenants' Application for Dispute Resolution in its entirety.

Also based on the above, I find the landlord is entitled to retain the security deposit and pet damage deposit and monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$50.00** comprised of the fee paid by the landlord for his application.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced 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: September 25, 2014

Residential Tenancy Branch

