



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for damage to the unit, pursuant to section 67;
- authorization to retain the tenants' security and pet damage deposits in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for her application from the tenants, pursuant to section 72.

This hearing also dealt with the tenants' cross-application pursuant to the *Act* for:

- authorization to obtain a return of double the amount of their security and pet damage deposits, pursuant to section 38;
- authorization to recover the filing fee for their application from the landlord, pursuant to section 72.

The tenant TR ("tenant") and the landlord attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions, and to call witnesses. The tenant confirmed that she had authority to represent the other "tenant JC" named in both applications, as an agent at this hearing.

Both parties confirmed receipt of each other's application for dispute resolution hearing packages. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the others' application packages.

Issues to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy?

Is the landlord entitled to retain the tenants' security and pet damage deposits in partial satisfaction of the monetary award requested?

Are the tenants entitled to a monetary award equivalent to double the value of their security and pet damage deposits as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

Both parties agreed that this month-to-month tenancy began on November 15, 2013 and ended on December 15, 2014. Monthly rent in the amount of \$1,075.00 was payable on the first day of each month. Both parties agreed that a security deposit of \$500.00 and a pet damage deposit of \$300.00 were paid by the tenants and the landlord continues to retain both deposits. Both parties provided a copy of the written tenancy agreement for this hearing.

Both parties agreed that a move-in condition inspection and report were completed on November 15, 2013 and a move-out condition inspection and report were completed on December 15, 2014. The landlord stated that she did not have written permission from the tenants to retain any amount from their security and pet damage deposits. The landlord confirmed that she filed her application to retain both deposits on May 5, 2015. The landlord confirmed that she received the tenants' forwarding address in writing on the move-out condition inspection report on December 15, 2014.

The tenants seek the return of double the amount of their security and pet damage deposits, totalling \$1,600.00. The tenant stated that pursuant to section 38 of the *Act*, the landlord did not return both deposits in full or make an application within 15 days of the end of this tenancy and providing a forwarding address in writing. The tenants also seek to recover the \$50.00 filing fee for their application.

The landlord indicated that she retained the tenants' entire security and pet damage deposits for damage to the rental unit, a loss of rental income, a loss of employment income and costs to prepare for this hearing. The landlord stated that the damage totalled \$1,199.69 for repairs, \$37.71 to produce photographs for this hearing, \$1,075.00 for a loss of one month's rent to make repairs, and \$1,768.80 for a loss of employment income while she performed the repairs. During the hearing, I advised the landlord that she could not recover her costs for producing photographs for this hearing, as the only recoverable hearing-related costs under section 72 of the *Act*, are with respect to filing fees for the application. The landlord confirmed that she seeks to recover the \$50.00 filing fee for her application.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the

issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues with respect to this entire tenancy:

1. Both parties agreed that the landlord will retain the tenants' entire security deposit of \$500.00 and pet damage deposit of \$300.00;
2. Both parties agreed that this settlement agreement constitutes a final and binding resolution of the landlord's application at this hearing and any issues arising out of this tenancy;
3. Both parties agreed that this settlement agreement constitutes a final and binding resolution of the tenants' application at this hearing and any issues arising out of this tenancy;
4. Both parties agreed that they will not initiate any further claims or applications against each other at the Residential Tenancy Branch, with respect to any issues arising out of this tenancy.

These particulars comprise a full and final settlement of all aspects of this dispute and arising out of this tenancy. Both parties gave verbal sworn affirmation at the hearing that they understood and agreed to the above settlement terms as legal, final, binding and enforceable, settling all aspects of this dispute and arising out of this tenancy.

The tenant confirmed that she would advise tenant JC about the outcome of this hearing and that she understood that this settlement is legal, final, binding and enforceable against tenant JC as well.

Conclusion

To give effect to the settlement reached between the parties, I order the landlord to retain the tenants' entire security deposit of \$500.00 and pet damage deposit of \$300.00.

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: May 28, 2015

