



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF, O

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants for a monetary order for return of all or part of the pet damage deposit or security deposit and to recover the filing fee from the landlord for the cost of the application.

Both tenants attended the hearing and gave affirmed testimony, however, despite being served with the Tenant's Application for Dispute Resolution and notice of this hearing by registered mail on April 10, 2015, no one for the landlord attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and the only participants who joined the call were the tenants. The tenants have provided a copy of a Canada Post cash register receipt bearing that date and a Registered Domestic Customer Receipt addressed to the landlord. The landlord has also provided evidentiary material. I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

- Have the tenants established a monetary claim as against the landlord for return of all or part of the pet damage deposit or security deposit?

Background and Evidence

The first tenant testified that this month-to-month tenancy began on April 1, 2014 and ended on October 31, 2014. Rent in the amount of \$1,100.00 per month was payable in advance on the 1st day of each month and there are no rental arrears. Prior to the beginning of the tenancy the landlord collected a security deposit from the tenants in the amount of \$550.00, and no pet damage deposit was collected.

The tenant further testified that the parties conducted a move-in condition inspection report at the beginning of the tenancy, and a move-out condition inspection report at the end of the tenancy. A copy has been provided which shows the condition of the rental unit at the beginning and end of the tenancy. The move-out portion is dated October 31, 2014 and contains a signature of the landlord and of the tenant. The tenant testified that when she received a copy of the report from the landlord, numerous comments and other writings were on it that were not on it when the tenant signed it. The tenant did not agree to any deductions from the security deposit. Although the landlord wrote that on the form, that portion is not signed by the tenant and was not filled out when the tenant signed in another area of the report. It also contains a forwarding address of the tenants, and the tenant believes the landlord wrote that on the report after receiving the address from the tenant in a text message on November 1, 2014. The landlord also responded to the tenant by text message, so the tenant is certain the landlord has had the forwarding address in writing since November 1, 2014.

The landlord had agreed to reimburse the tenants \$50.00 for repairing a sliding door in the rental unit. The landlord sent to the tenants a cheque for \$600.00, being the full security deposit and reimbursement for the repair, but cancelled the cheque the following day. The tenants' financial institution charged the tenants \$7.00 for the returned item, and a copy of the bank statement has been provided.

The landlord then sent to the tenants a cheque in the amount of \$464.55 with a Damage Deposit Refund Form showing that the landlord had deducted \$135.45 for carpet cleaning. The cheque also had a note on it that states: "DD Return Accepted if Deposited." The tenants didn't agree so didn't deposit the cheque. Copies of the cheque and the Damage Deposit Refund Form have been provided.

The tenants received the landlord's evidentiary material which also included another cheque in the amount of \$464.55 which does not have any statement about accepting the amount of the deposit return if the cheque is cashed, but the tenants have not yet cashed it deciding to await the outcome of this hearing.

The landlord has not served the tenants with an application for dispute resolution claiming against the deposit, and has not followed the rules. The tenants were in a financial bind when they moved out but did everything by the rules.

The second tenant testified that he paid the landlord \$550.00 security deposit in cash prior to the commencement of the tenancy. He also offered the landlord a pet damage deposit when he acquired a dog, but the landlord said not to worry about it.

Analysis

The *Residential Tenancy Act* is very clear with respect to security deposits. A landlord must return to a tenant a security deposit or pet damage deposit in full within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make a claim against it by filing an application for dispute resolution within that 15 day period. If the landlord fails to do so, the landlord must be ordered to repay the tenant double.

In this case, the landlord returned the security deposit, put a stop-payment on the cheque, issued another with a condition that if deposited it's accepted as full payment, and then issued another cheque for a reduced amount of the security deposit in July, 2015. In the circumstances, I find that the landlord did not return the deposit or make an application claiming against it within 15 days, and I find the tenants are entitled to double.

The tenants currently have \$414.55 as well as reimbursement for the door repair, and I order that the tenants cash that cheque. I further order the landlord to pay to the tenants the balance of \$135.55 and an additional \$550.00 representing double. I also order the landlord to repay to the tenants the \$7.00 service fee charged by their financial institution. Since the tenants have been successful with the application, the tenants are also entitled to recovery of the \$50.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$742.45.

This order is final and binding and may be enforced.

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 10, 2015

Residential Tenancy Branch

