



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This is an application by the tenants filed under the Residential Tenancy Act (the “Act”) for a monetary order for return of the security deposit and pet damage deposit (the “Deposits”) and to recover the filing fee for the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

Are the tenants entitled to a monetary order for return of double the Deposits?

Background and Evidence

The tenancy began April 2013. Rent in the amount of \$2,195.00 was payable on the first of each month. A security deposit of \$1,097.50 and pet damage deposit of \$1,097.50 were paid by the tenants.

The tenant testified that they vacated the premises on April 30, 2015. The tenant stated that they provided the landlord with a written notice of the forwarding address on the move-out condition inspection report.

The tenant testifies that on May 11, 2015, they received a cheque from the landlords in the amount of \$1,126.13. The tenant stated that they did not authorize the landlords to retain any amount from the Deposits.

The landlords testified that the postal code the tenants provided on the move-out condition inspection report was wrong and that they contact the tenant and were provided with the correct postal code.

The landlord testified that they returned to the tenants a portion of the Deposits. The landlord acknowledged they did not have written permissions from the tenants to retain any portion of the Deposits and that they did not file an application claiming against the deposit within 15 days.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Return of security deposit and pet damage deposit is defined in Part 2 of the Act.

Return of security deposit and pet damage deposit

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.

...

(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.

(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.

In this case, there was no evidence that the landlords had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address, which was given on April 30, 2015, although I accept the postal code was wrong, which was shortly rectified.

I accept the undisputed testimony of the tenant that they did not agree in writing that the landlords may retain any amount from the Deposits.

I find the landlord has breached 38(1) of the Act.

The security deposit is held in trust for the tenants by the landlords. At no time do the landlords have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlords may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator. Here the landlords did not have any authority under the Act to keep any portion of the Deposits. Therefore, I find that the landlords were not entitled to retain any portion of the Deposits.

Section 38(6) provides that if a landlords do not comply with section 38(1), the landlord must pay the tenants double the amount of the Deposits. The legislation does not provide any flexibility on this issue.

Therefore, I must order, pursuant to section 38 of the Act, that the landlords pay the tenants the sum of \$4,440.00, comprised of double the pet damage deposit (\$1,097.50) and security deposit (\$1,097.50) on the original amounts held and the \$50.00 filing fee. That amount will be reduced by \$1,126.13 as that amount has been returned to the tenants. Therefore, I find the tenants are entitled to a monetary order for the balance due of **\$3,313.87**.

The tenants are given a formal monetary order pursuant to 67 of the Act, in the above terms and the landlords must be served with a copy of this order as soon as possible. Should the landlords fail to comply with this order, the order may be filed in the small claims division of the Provincial Court and enforced as an order of that court.

Conclusion

The tenants' application for return of the Deposits is granted. The tenants are granted a monetary order in the above noted amount.

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: October 06, 2015

Residential Tenancy Branch

