



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

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.

One of the named tenants attended the hearing and also represented the other named tenant. The landlord also attended. The parties each gave affirmed testimony and were given the opportunity to question each other with respect to the evidence and testimony provided, all of which has been reviewed and is considered in this Decision

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

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

Background and Evidence

The tenant testified that this fixed term tenancy began on May 1, 2013 and expired on April 30, 2015, thereafter reverting to a month-to-month tenancy, which ultimately ended on June 30, 2015. Rent in the amount of \$2,100.00 per month was payable in advance on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$1,050.00 as well as a pet damage deposit in the amount of \$1,050.00.

The tenant further testified that he sent a letter to the landlord, which contained the tenants' forwarding address, by certified mail on July 28, 2015 and has provided a copy of the tracking results and a Canada Post cash register receipt showing that date. The landlord returned the pet damage deposit to the tenants in the amount of \$1,050.00 but the tenants have not received the \$1,050.00 security deposit. The parties had had conversations respecting a damaged faucet, however the tenants have not heard from the landlord since the tenants served the landlord with the application and notice of this hearing.

The tenant does not believe that a move-in or a move-out condition inspection report was completed, however that is something that his wife may have participated in, and she is not available for this hearing. However, the tenant does not have a copy of either report.

The tenants have not been served with an application for dispute resolution by the landlord claiming against the deposit.

The landlord testified that he offered to allow the tenants to repair the faucet on the shower/bath, however it's not as easy as the tenant described, being a \$2.00 part and glue. It will cost a lot more and will also require a carpenter to repair the wall where the faucet will have to be removed and reinstalled. The faucet handle was abused and continued to be re-used by the tenants till it broke, which is caused by the tenants' negligence. The faucet was probably as old as the house, 8 to 10 years old, and the tenants never told the landlord about any repair required or other issues.

The parties also spoke of the carpet and a whole bunch of other stuff abused by the tenants. A move-in and a move-out condition inspection report were completed by a realtor that the landlord hired. The same form was used at move-in and at move-out, but the landlord didn't know he should provide it for this hearing.

Analysis

The *Residential Tenancy Act* states that a landlord must return a security deposit or pet damage deposit to a tenant in full or make an application for dispute resolution claiming against the deposits or a portion of them within 15 days of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, whichever is later. If the landlord fails to do either within that 15 day period, the landlord must repay the tenant double the amount.

In this case, I am satisfied that the tenancy ended on June 30, 2015. The tenant testified that on July 28, 2015 he sent by certified mail a letter to the landlord which contained the tenants' forwarding address, and has provided evidence of having done so. The *Act* states that documents served by that method are deemed to have been served 5 days later, or in this case, August 2, 2015. The tenant has also provided evidence that it was received by the landlord on July 30, 2015. The landlord did not return the security deposit or make an application for dispute resolution claiming against it within that 15 day period, and therefore, I find that the tenants are entitled to double the amount, or \$2,100.00.

Since the tenants have been successful with the application, the tenants are also entitled to recovery of the \$50.00 filing fee.

At the conclusion of the hearing, I explained Section 38 of the *Residential Tenancy Act* to the parties, which is set out below for the benefit of the parties. The landlord became angry, stated he would not be paying the tenant, and that he would take this matter to Court. I explained that the Court process is this hearing, and the landlord may seek legal advice.

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.

(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.

Landlord may retain deposits if forwarding address not provided

- 39** Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,
- (a) the landlord may keep the security deposit or the pet damage deposit, or both, and
 - (b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

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 \$2,150.00.

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: November 10, 2015

Residential Tenancy Branch

