



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 in response to the tenant's application for a Monetary Order to recover the security and pet deposit and to recover the filing fee from the landlord for the cost of this application.

The tenant, the landlords and an Advocate for the landlords attended the conference call hearing. The parties gave sworn testimony. The parties provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order to recover the security and pet deposit?

Background and Evidence

The parties agreed that this tenancy started on February 01, 2015 for a six month fixed term period ending on July 31, 2015. The tenancy ended on July 02, 2015. Rent for this unit was \$1,350.00 per month due on the first day of each month in advance. The tenant paid a security deposit of \$675.00 and a pet deposit of \$200.00 in January, 2015.

The tenant testified that the landlord failed to return the security and pet deposit within 15 days of receiving the tenant's forwarding address in writing. The tenant testified that the forwarding address was provided to the landlord on July 02, 2015. The tenant testified that the landlord was not given written permission to keep all or part of the security or pet deposit. The landlord did return the amount of \$450.00 on July 03, 2015 but retained the balance of \$425.00 without permission. The tenant testified that he does not waive his right to have the security and pet deposit doubled.

The tenant testified that the landlord did conduct a move in and move out inspection of the unit at the start and end of the tenancy but failed to complete a move in and a move out condition inspection report. Therefore, there is no record of the condition of the unit at the start of the tenancy. The tenant disputed that the unit was left with any damage.

The landlord agreed that they did receive the tenant's forwarding address in writing on July 02, 2015. The landlord agreed the tenants have not provided written permission for the landlord to keep all or part of the security or pet deposit and testified that they retained the amount of \$425.00 for some costs towards damage caused at the rental property. The landlord's advocate argued that it is unfair for the tenants to be awarded double the security or pet deposits as they have caused damage and the landlord was not aware they only had 15 days to file an application to keep either of the deposits.

Analysis

Section 38(1) of the *Residential Tenancy Act (Act)* says that a landlord has 15 days from the end of the tenancy or from the date that the landlord receives the tenant's forwarding address in writing to either return the security and pet deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If the landlord does not do either of these things and does not have the written consent of one or all of the tenants to keep all or part of the security and pet deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security and pet deposit to the tenant.

Sections 23(4) and 35(3) of the *Act* require a landlord to complete a condition inspection report at the beginning and end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign the condition inspection report. In failing to complete the condition inspection reports when the tenant moved in and out, I find the landlord contravened s. 23(4) and 35(3) of the *Act*. Consequently, s. 24(2)(c) and s. 36(2)(c) of the *Act* says that the landlord's right to claim against the security or pet deposit for damages is extinguished.

When a landlord's right to claim against the security and pet deposit has been extinguished the landlord must return the security and pet deposit to the tenant within 15 days of either the end of the tenancy or the date the tenant gives the landlord their forwarding address in writing.

Therefore, based on the above and the evidence presented I find that the landlord did receive the tenant's forwarding address in writing on July 02, 2015. As a result, the landlord had until July 17, 2015 to return all of the tenant's security and pet deposit. As the landlord failed to do so, the tenant has established a claim to have the security and pet deposit doubled to an amount of **\$1,750.00**, pursuant to section 38(6)(b) of the *Act*. As the landlord has returned the amount of **\$450.00** this has been deducted from the tenant's monetary award. There has been no accrued interest on the security deposit for the term of the tenancy.

The tenant is also entitled to recover the **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the tenant's amended monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$1,350.00**. The Order

must be served on the Respondent. If the Respondent fails to comply with the Order, the Order is enforceable through the Provincial Court 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: December 08, 2015

Residential Tenancy Branch

