



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ALKON INVESTMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened as a result of the tenants' application for dispute resolution under the *Residential Tenancy Act* (the "*Act*"). The tenants applied for monetary order for double the return their security deposit and pet damage deposit under the *Act*, and to recover the cost of the filing fee.

Tenant C.M., an agent for the tenant (the "tenant agent") and an agent for the landlord (the "landlord agent") attend the teleconference hearing and provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions during the hearing. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

Neither party raised any concerns regarding the service of documentary evidence.

Issue to be Decided

- Are the tenants entitled to the return of double their security deposit and pet damage deposit under the *Act*?
- Are the tenants entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The parties agreed that a fixed term tenancy began on July 1, 2013 and reverted to a month to month agreement after two years, for the last month of the tenancy. The tenancy ended on August 31, 2015 when the tenants vacated the rental unit. The monthly rent was \$750.00 which was due on the first day of each month. The parties confirmed that the tenants paid a security deposit of \$375.00 and a pet damage deposit of \$375.00 at the start of the tenancy.

The parties agreed that the tenancy ended on August 31, 2015 and the agent did not dispute that he received the tenants' written forwarding address on August 31, 2015. The parties agreed that the tenants did not surrender any portion of either the security deposit or pet damage deposit to the landlord. The landlord did not file an Application claiming towards the security deposit or pet damage deposit. The tenants confirmed that they have received \$550.00 from the landlord of the \$750.00 combined security deposit and pet damage deposit. The tenants are seeking double the \$750.00 combined deposit amount, less the \$550.00 already paid by the landlord, plus the recovery of the cost of the filing fee.

Analysis

Based on the above, the evidence of the parties, and on a balance of probabilities, I find the following.

Tenants' claim for the return of double the security deposit and double the pet damage deposit – I accept that the landlord returned \$550.00 of the tenants' \$750.00 combined deposits. There was no evidence before me to show that the tenants had agreed, in writing, that the landlord could retain any portion of the security deposit or pet damage deposit, which has accrued no interest to date. There was also no evidence before me to show that the landlord had applied for arbitration to retain any portion of the security deposit or pet damage deposit within 15 days of the end of the tenancy or the date of receipt of the written forwarding address of the tenants, which was August 31, 2015.

The security deposit and pet damage deposits are held in trust for the tenants by the landlord. At no time does the landlord have the ability to simply keep the security deposit or pet damage deposit because they feel they are entitled to it or are justified to keep it. The landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as an order from an Arbitrator, or the written agreement of the tenants. In the matter before me, I find the landlord did not have any authority under the *Act* to keep any portion of the security deposit or pet damage deposit and did not return the full deposits to the tenants within 15 days in accordance with the *Act*. Section 38 of the *Act* applies which states:

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.**

(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.

[my emphasis added]

In the matter before me, I find that the landlord breached section 38 of the *Act* by failing to return the tenants' security deposit and pet damage deposit in full to the tenants within 15 days of receiving the forwarding address of the tenants in writing on August 31, 2016, and having not made a claim towards either deposit, and by not having the written permission of the tenants to retain any portion of either deposit.

Given the above, I find the tenants are entitled to the return of double the original security deposit of \$375.00 and double the original pet damage deposit of \$375.00 for a total of \$1,500.00, which is comprised of \$750.00 for the doubled security deposit, and \$750.00 for the doubled pet damage deposit. There is no dispute that the tenants did eventually receive \$550.00 from the landlord which I will deduct from the tenants' \$1,500.00 monetary award leaving a balance owing by the landlord to the tenants in the amount of **\$950.00**.

As the tenants' application had merit, I grant the tenants the recovery of their filing fee in the amount of **\$50.00**.

Monetary Order – I find that the tenants has established a total monetary claim in the amount of **\$1,000.00**, comprised of \$1,500.00 for the doubled security deposit and doubled pet damage deposit, less \$550.00 paid by the landlord to the tenants, plus the \$50.00 filing fee. I grant the tenants a monetary order pursuant to section 67 of the *Act* for the balance owing by the landlord to the tenants in the amount of **\$1,000.00**.

Conclusion

The tenants' application is successful.

The tenants have established a total monetary claim in the amount of \$1,000.00, comprised of \$1,500.00 for the doubled security deposit and doubled pet damage deposit, less \$550.00 paid by the landlord to the tenants, plus the \$50.00 filing fee. The tenants have been granted a monetary order pursuant to section 67 of the *Act* for the balance owing by the landlord to the tenants in the amount of \$1,000.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: April 22, 2016

Residential Tenancy Branch