



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- authorization to retain all or a portion of the tenants' security deposit and pet damage deposit (the deposits) in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The tenant JW (the tenant) admitted service of the landlord's dispute resolution package.

Disposition of Landlord's Application

While the tenant appeared on behalf of both tenants by way of conference call, the landlord did not, although I waited until 1344 in order to enable the applicant to connect with this teleconference hearing scheduled for 1330.

Rules 7.1, 7.3 and 7.4 of the Rules of Procedure establish the consequences of failing to appear at a hearing at the scheduled time:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, in the absence of any evidence or submissions from the landlord and in the absence of the landlord's participation in this hearing, I order the landlord's application dismissed without leave to reapply.

Issue(s) to be Decided

Are the tenants entitled to return of their security deposit and pet damage deposit?

Background and Evidence

While I have turned my mind to all the testimony, not all details of the submissions and / or arguments are reproduced here.

This tenancy began 1 July 2014 and ended in May 2015. Monthly rent in the amount of \$750.00 was due on the first. The tenant testified that the tenants remitted a security deposit in the amount of \$375.00 and a pet damage deposit in the amount of \$375.00.

The tenant testified that although the landlord and tenants conducted a condition inspection at the beginning of the tenancy, the landlord did not create a condition inspection report or send a copy to the tenants.

On 4 November 2015 the landlord and tenants appeared in respect of another application for dispute resolution. On 4 November 2015, the arbitrator issued a decision in which the arbitrator made the following order:

However, as the landlord has confirmed that he now has the tenant's mailing address, I order that the date of this decision will be considered the date the landlord received the tenant's forwarding address.

The landlord filed his claim for damage to the rental unit against the tenants on or about 16 December 2015.

Analysis

The landlord has made a claim that has been dismissed. The landlord continues to hold the deposits totaling \$750.00. *Residential Tenancy Policy Guideline*, “17. Security Deposit and Set off” (Guideline 17) provides guidance in this situation:

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:
 - a landlord’s application to retain all or part of the security deposit, or
 - a tenant’s application for the return of the depositunless the tenant’s right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

Guideline 17 sets out that:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- ...
- If the landlord has claimed against the deposit for damage to the rental unit and the landlord’s right to make such a claim has been extinguished under the Act;
- ...
- whether or not the landlord may have a valid monetary claim.

At the hearing, I read Guideline 17 to the tenant. I asked the tenant if he was waiving the tenants’ right to seek double the deposits. The tenant informed me the tenants were not waiving their right to doubling.

Subsection 23(1) of the Act sets out that a landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day. Subsection 23(3) of the Act sets out that the landlord must offer the tenant at least two opportunities for the inspection. Subsection 23(4) of the Act specifies that a landlord must complete a condition inspection report that complies with the regulations. Subsection 23(5) of the Act sets out that both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of the report

Paragraph 24(2)(c) of the Act sets out that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations..

I accept the tenant's testimony that there was no condition move-in inspection report completed. Pursuant to paragraph 24(2)(c) of the Act, I find that, by failing create or provide a copy of a condition move-in inspection report, the landlord has extinguished his right to claim against the deposits for damage to the rental unit.

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or pet damage deposit or file for dispute resolution for authorization to retain a security deposit or pet damage deposit within fifteen days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the deposits. As the landlord's right to claim against the deposits was extinguished, the only available action by the landlord was to return the security deposit and pet damage deposit within fifteen days of receiving the tenants' forwarding address in writing.

Pursuant to the decision of 4 November 2015, the arbitrator found that the landlord had the tenants' forwarding address as at 4 November 2015. The landlord had knowledge of the tenants' forwarding address as this is the address he used for filing this application for dispute resolution. The landlord has not returned the tenants' security deposit and pet damage deposit. Over fifteen days has elapsed. Accordingly, the tenants are entitled to receive return of their deposits as well as compensation pursuant to subsection 38(6) of the Act for a total monetary award of \$1,500.00.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$1,500.00 under the following terms:

Item	Amount
Return of Security Deposit	\$375.00
Return of Pet Damage Deposit	375.00
Subsection 38(6) Compensation	750.00
Total Monetary Order	\$1,500.00

The tenants are provided with a monetary order in the above terms and the landlord(s) must be served with this order as soon as possible. Should the landlord(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: July 19, 2016

Residential Tenancy Branch

