



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

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

On December 4, 2015, the tenant made an application for substituted service. The Arbitrator determined based on the submissions of the tenant that the landlords have not provided the tenant with their service address. The Arbitrator granted the tenant’s application for substituted service. The Arbitrator ordered that the tenant may serve both landlords’ with the Notice of Hearing and any other documents by email. The file number for the substituted application and order is noted on the covering page of this decision.

The tenant appeared. Although served with the Application for Dispute Resolution and Notice of Hearing by email on January 19, 2016, the landlords did not appear.

I find that the landlords have been duly served in accordance with the Act.

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

Is the tenant entitled to a monetary order for return of double the Deposits?

Background and Evidence

The tenancy began on April 1, 2015. Rent in the amount of \$1,050.00 was payable on the first of each month. A security deposit of \$525.00 and a pet damage deposit of \$250.00 were paid by the tenant.

The tenant testified that they vacated the premises on September 30, 2016. The tenant stated that they provided the landlord with a written notice of the forwarding address on October 29, 2015, by email. The tenant stated that the landlord responded by informing them that they were deducting the amount of \$350.00 from the Deposits and if they did not agreed to this that they would withhold the entire Deposits. Filed in evidence is a copy of the email dated November 15, 2015 at 13:02.

The tenants stated that they did not authorize the landlords to retain any amount from the Deposits and there were no orders made that authorized the landlord to retain any amount from the Deposits.

The tenant stated that the landlords also agreed to return the amount of \$40.00 for an internet credit, which they did not receive. Filed in evidence is security deposit breakdown which shows the landlords agreed to this credit.

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 October 29, 2015.

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

I find the landlords have breached 38(1) of the Act. The Deposits are held in trust for the tenant by the landlords. At no time do the landlords have the ability to simply keep the Deposits 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 Deposits 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 landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the Deposit. 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 tenant the sum of **\$1,550.00** comprised of double the security deposit (\$525.00) and pet damage deposit (\$250.00) on the original amounts held.

I am further satisfied that the landlords agreed to provide the tenant with an internet credit as this is supported by the documentary evidence. Therefore, I find the tenant is entitled to recover the internet credit in the amount of **\$40.00**.

I find the tenant has established a total monetary claim in the amount of **\$1,690.00**, comprised of the above amounts and to recover the \$100.00 filing fee from the landlords.

The tenant is 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. The **landlords are cautioned** that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenant's application for return of double the Deposits is granted. The tenant is 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: September 13, 2016

Residential Tenancy Branch