



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

| Dispute Codes **MNSD, FF**

Introduction

On April 29, 2016, the Tenant submitted an Application for Dispute Resolution for the return of all or part of the pet damage deposit or security deposit, and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

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.

Preliminary and Procedural Issues

| The Respondent who is named as the Landlord in the Tenants' Application submits that she is not the Landlord. She testified that she no longer works as a property manager for the owner. She testified that she was the property manager during the tenancy and she collected the rent and dealt with the tenancy issues during the tenancy on behalf of the owner. She testified that she stopped being the property manager in November 2015.

The definition of Landlord in the *Residential Tenancy Act* (the Act) includes the owner of the rental unit, the owners agent, or another person who on behalf of the Landlord permits occupation of the rental unit; exercises powers and performs duties under the Act or tenancy agreement; exercises any of the rights of a Landlord under a tenancy agreement or this Act in relation to the rental unit. The definition of Landlord includes a former Landlord, when the context requires this.

While I acknowledge that the Respondent is no longer working as an agent for the owner of the rental unit, she testified that she was the property manager who was dealing with the Tenants during the tenancy. I find that the Respondent exercised powers and performed duties under the Act, and the tenancy agreement, on behalf of the owner and I find that she meets the definition of a Landlord. While the Respondent no longer works as the Landlord, she is a former Landlord who dealt directly with the Tenants. I have considered that if former agents of a Landlord were not considered to be a Landlord, the Dispute Resolution process for Tenants would be less effective. Tenants often only deal with an agent of an owner, and Tenants would not be able to effectively deal with their claims if a former Landlord cannot be named in an Application for Dispute Resolution. I find that the Respondent is properly named as the Landlord.

I am also mindful of the Respondents testimony that she has not been the property manager since November 2015, but she appears to still be acting on behalf of the owner because has submitted documentary and photographic evidence alleging that the Tenants left the rental unit unclean and damaged.

Issues to be Decided

- Are the Tenants entitled to the return of the security deposit?
- Should the amount of the security deposit be doubled?
- Are the Tenants entitled to recover the cost of the filing fee?

Background and Evidence

Both parties testified that the tenancy commenced on September 1, 2014, as a one year fixed term tenancy. Rent in the amount of \$1,200.00 is due on the first day of each month. The Tenants paid the Landlord a security deposit of \$600.00.

The Tenant submits that at the beginning of the tenancy the Landlord did not conduct a move in inspection. He submits that the Landlord gave the Tenants a condition inspection form and asked them to complete the form and return it to her. The Tenant submits that after he provided the Landlord with the completed condition inspection form, the Landlord did not provide a copy of the form to the Tenants.

The Tenant testified that he called the Landlord to arrange a move out inspection, and the Landlord responded by saying that she was unable to do a move out inspection with the Tenant.

The Tenant testified that he provided the Landlord with his forwarding address in writing by email and by registered mail for the return of the security deposit. The Tenant

testified that he did not agree that the Landlord could keep any part of the security deposit.

The Tenant points out that page 10 of the Landlord's documentary evidence shows that the Tenant provided his forwarding address to the Landlord on September 10, 2015.

In reply, the Landlord testified that she concedes that she did not conduct a proper walk through of the rental unit at the start of the tenancy. She acknowledges that the Tenant contacted her to arrange a move out inspection, and she submits that the Tenants were not able to meet to do this because they were moving out of the city. The Landlord testified that the Tenants left the unit dirty and damaged and she was directed by the property owner to not return the full security deposit. The Landlord testified that she returned \$26.00 to the Tenant.

The Landlord has provided documentary evidence of an Interact e-transfer in the amount of \$26.00 sent to the Tenants.

Analysis

Section 38 (1) of the Act states that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38 (6) of the Act states that 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.

Based on the evidence and testimony before me, I make the following findings:

The Tenants did not agree that the Landlord could keep any amount from the security deposit. The Landlord was notified of the Tenants forwarding address in writing on September 10, 2015, and did not repay the deposit or make Application for Dispute resolution to claim against it within 15 days pursuant to section 38(1) of the Act. Therefore under section 38(6) of the Act, the Landlord must pay the Tenant double the amount of the security deposit.

The Tenants paid the Landlord a \$600.00 security deposit at the start of the tenancy, and the Landlord returned \$26.00. The remaining amount of the security deposit is \$574.00. The Landlord owes the Tenant the amount of \$1,148.00 which is double the amount of \$574.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to pay the Tenant the \$100.00 fee that the Tenant paid to make application for dispute resolution.

I grant the Tenants a monetary order in the amount of \$1,248.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Tenant's application is successful. The Tenants are granted a monetary order in the amount of \$1,248.00.

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 08, 2016

Residential Tenancy Branch