



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

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

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

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 the Deposits?

Background and Evidence

The tenancy began on March 1, 2015. Rent in the amount of \$2,000.00 was payable on the first of each month. A security deposit of \$1,000.00 and a pet damage deposit of \$1,000.00 were paid by the tenants. The tenancy ended on March 31, 2016.

The tenants testified that they vacated the premises on March 16, 2016. The tenants stated that they provided the landlord with a written notice of the forwarding address on April 2, 2016, in the move-out condition inspection report.

The tenants stated they did not authorize the landlord to retain any specified amount from the Deposits and the landlord added information to the move-out inspection after it was signed that they did not agree to.

The landlord testified that they made an application for dispute resolution on April 11, 2016, claiming against the Deposits. The landlord indicated that they did not receive any documents from the Residential Tenancy Branch.

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.

In this case, the landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address, which was given on April 2, 2016. However, the Residential Tenancy Branch (the "RTB") records indicate that the landlord application was abandoned as the landlord did not pick up their hearing package to serve on the tenants.

The audit notes further indicate that the RTB staff attempted to contact the landlord at the number provided in the landlord's application and that number was said to be not in use at that time. The audit notes show no further contact was initiated by the landlord.

As the landlord was abandoned as they did not pick up the hearing documents or service the tenants as required by the Act. I find the effect was the same as if the landlord had not filed an application for dispute resolution.

I find the landlord has breached 38(1) of the Act.

The security deposit is held in trust for the tenants by the landlord. At no time does the landlord have the ability to simply keep the Deposits 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. Here the landlord did not have any authority under the Act to keep any portion of the Deposits. Therefore, I find that the landlord was 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 Deposits. The legislation does not provide any flexibility on this issue.

Therefore, I must order, pursuant to section 38 of the Act, that the landlord pay the tenants the sum of **\$4,100.00**, comprised of double the pet damage deposit (\$1,000.00) and security deposit (\$1,000.00) on the original amounts held and to recover the \$100.00 fee for filing this Application.

The tenants are given a formal monetary order pursuant to 67 of the Act, in the above terms and the landlord must be served with a copy of this order as soon as possible. Should the landlord 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.

Conclusion

The tenants' application for return of the Deposits is granted. The tenants are 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 19, 2016

Residential Tenancy Branch