



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PLANTINUM PROPERTIES GROUP (PPG)
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing was scheduled to deal with the tenant's application for a Monetary Order for return of the security deposit, pet damage deposit, and other damages or losses. The landlord did not appear at the hearing. The tenants provided a registered mail receipt, including tracking number, to show that the hearing package was sent to the landlord on September 9, 2016. The tenants further submitted that evidence was sent to the landlord via registered mail on October 13, 2016 and they orally provided a registered mail tracking number as proof of service. The tenants confirmed that the registered mail was addressed to the landlord's service address, as indicated on the tenancy agreement and the move-in inspection report, and that the registered mail was delivered. The tenants also confirmed that the landlord did not change during the tenancy. I was satisfied that the landlord was served with notification of this proceeding and I continued to hear from the tenants without the landlord present.

During the hearing the tenants requested that their application be amended to request return of double the security deposit and pet damage deposit. I permitted the amendment since the Act provides that a security deposit and pet damage deposit must be doubled in certain circumstances and I have considered whether those circumstances have been established.

I noted that the tenants had not included a copy of a letter they testified was mailed to the landlord on August 15, 2016. I ordered the tenants to produce a copy of that letter which they did the day following the hearing.

Issue(s) to be Decided

1. Are the tenants entitled to return of double the security deposit and pet damage deposit?
2. Are the tenants entitled to compensation for the other amounts claimed?

Background and Evidence

The fixed term tenancy started August 1, 2015 and was set to expire on July 31, 2016. The tenants paid a security deposit of \$599.50 and a pet damage deposit of \$599.50. The tenancy ended on July 31, 2016.

A move-in inspection report was prepared and signed by the parties. The tenant participated in a move-out inspection with the landlord's agent; however, the tenant refused to sign the inspection report as she did not agree with the landlord's assessment of the property.

The tenant testified that she did not authorize the landlord to make any deductions from the deposits. The tenants sent their forwarding address to the landlord via registered mail on August 15, 2016. The tenants provided a copy of the registered mail receipt, including tracking number, and a copy of the letter sent to the landlord.

The landlord did not return the deposits and the tenants were not served with an Application for Dispute Resolution by the landlord. However, the tenants received communication from a collection agency indicating the landlord was seeking to collect money for damage that the tenants were not agreeable to.

Aside from return of the deposits, the tenants requested compensation for the following items:

1. A consulting fee incurred while seeking return of the deposits from the landlord and filing this dispute.

The Act does not provide for recovery of costs incurred to request return of a deposit or to prepare for and participate in a dispute resolution proceeding with the exception of the filing fee. Therefore, I dismissed this portion of the tenants' claim summarily.

2. The cost of an extension cord and snow shovel that went missing from the landlord's shed. The tenants testified that after the tenancy started the landlord and the male tenant entered into a contract for the male tenant to provide grounds keeping services at the residential property, a townhouse complex. The male tenant would submit his hours to the landlord's office and compensation would be given in the form of a deduction from rent payable. As part of the grounds keeping duties, the male tenant stored an extension cord and snow

shovel in the landlord's shed on the property. At the end of the tenancy these items were missing from the shed.

As explained to the parties during the hearing, my authority to resolve disputes is limited to those that fall under the Act and pertain to a tenancy agreement. I do not have authority to resolve disputes involving employment contracts or contracts for services except where they impact a tenancy, such as payment of rent. Having heard that an agreement for grounds keeping services was reached after the formation of the tenancy and there was no dispute about the payment or deductions from rent, I was of the view that the grounds keeping agreement was a separate employment contract or contract for services over which I do not have jurisdiction. Therefore, I declined to consider this portion of the tenants' claim further and the tenant remains at liberty to resolve this particular issue in the appropriate forum if the tenant so chooses.

Analysis

Section 38(1) of the Act provides that unless a landlord has a legal right to retain all or part of a deposit, a landlord must return the security deposit and/or pet damage deposit to the tenant or make an Application for Dispute Resolution to claim against it within 15 days from the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing, whichever day is later. Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit and/or pet damage deposit.

In this case, I was not provided any evidence to suggest that the tenants extinguished their right to return of the deposits. The tenants did not authorize the landlord to retain the deposits in writing and the landlord has not been given authorization to retain the deposits by an Arbitrator. Therefore, there is no evidence before me to demonstrate that the landlord has a legal right to retain the deposits.

Based upon the evidence before me, I am satisfied the landlords had been provided the tenants' forwarding address in writing when it was mailed, via registered mail, on August 15, 2016. Accordingly, I find the landlord was obligated to comply with section 38(1) of the Act by either refunding the deposits to the tenants or filing another Application for Dispute Resolution within 15 days of receiving the forwarding address. Since the landlord did neither, I find the tenants entitled to return of double the security deposit and pet damage deposit pursuant to section 38(6) of the Act.

In light of the above, I provide the tenants with a Monetary Order in the amount of \$2,398.00 [calculated as (\$599.50+ \$599.50) x 2] to serve and enforce upon the landlord. To enforce the Monetary Order it must be served upon the landlord and it may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The tenants are provided a Monetary Order against the landlord in the sum of \$2,398.00 for return of double the security deposit and pet damage deposit.

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: November 02, 2016

Residential Tenancy Branch

