



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking a monetary order for return of all or part of the pet damage deposit or security deposit and to recover the filing fee from the landlord for the cost of the application.

Both tenants attended the hearing and gave affirmed testimony. However, the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the landlord attended the call. One of the tenants testified that the landlord was served with the Tenant's Application for Dispute Resolution and notice of this hearing by registered mail on May 5, 2016 and orally provided a tracking number. The Notice of a Dispute Resolution Hearing is dated May 04, 2016, as well as an instruction sheet provided to the tenants by the Residential Tenancy Branch indicating that the documents are to be served no later than May 7, 2016. I accept the affirmed testimony of the tenant, and I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*.

All evidence and the testimony of the tenants is considered in this Decision.

Issue(s) to be Decided

Have the tenants established a monetary claim as against the landlord for all or part or double the amount of the security deposit?

Background and Evidence

The first tenant testified that this fixed term tenancy began on March 31, 2015 and expired on June 30, 2015, thereafter reverting to a month-to-month tenancy. The tenants were given notice to vacate the rental unit by November 30, 2015 because the landlord was ordered under a by-law to decommission the suite. The tenants vacated the rental unit on November 30, 2015.

Rent in the amount of \$1,200.00 per month was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$600.00 and no pet damage deposit was collected. The rental unit is a basement suite in the landlord's home and the landlord resided in the upper level. A copy of the tenancy agreement has been provided.

The tenant further testified that at the beginning of the tenancy the landlord told the tenants that a move-in condition inspection was not necessary because the landlord was aware of the condition of the rental unit. The tenants completed a move-in condition inspection report in the absence of the landlord, and completed the move-out portion at the end of the tenancy. A copy has been provided.

The landlord had instructed the tenants in an e-mail to return the keys to the rental unit to the landlord's mother who resided across the street from the rental unit. The tenants have a photocopier, and copied the condition inspection reports which contained the tenants' forwarding address in writing along with the keys and personally handed them to the landlord's mother as instructed on November 30, 2015.

The parties had e-mail discussions about the security deposit, including one wherein the landlord claimed that items were missing and the suite was not clean enough. The tenants received an e-mail money transfer from an unknown source in the amount of \$146.52. Assuming it was a portion of the security deposit, the tenants rejected the e-mail transfer because they were afraid it would mean that they agreed with the deductions set out in the landlord's e-mail, and the tenants did not agree. Copies of e-mails have been provided.

No further communication has taken place between the parties. The landlord has not returned the security deposit and has not served the tenants with an application for dispute resolution claiming against the deposit.

The second tenant testified that the tenants believed that if they accepted the e-mail transfer they would be accepting the conditions set out in the landlord's e-mail, but the

tenants did not accept that. One e-mail said extension cords and hedge trimmers were missing, and the landlord would deduct costs of those.

The money sent by e-transfer was from someone the tenants didn't know. There has been no communication with the landlord since.

Analysis

The *Residential Tenancy Act* is very clear. A landlord has 15 days from the later of the date the tenancy ends or the date the landlord receives a tenant's forwarding address in writing to return a security deposit to a tenant in full, or make an application for dispute resolution claiming against the deposit within that 15 day period. If the landlord does neither, the landlord must repay the tenant double the amount.

In this case, I accept the undisputed testimony of the tenants that the tenants completed the move-in and move-out portions of the condition inspection report in the absence of the landlord, and gave a copy to the landlord's mother on November 30, 2015 along with the keys to the rental unit as instructed by the landlord. I have reviewed the condition inspection reports, and a forwarding address of the tenants is clearly written thereon. I have also read the e-mails exchanged by the parties and I am satisfied that the tenancy ended on November 30, 2015.

The landlord had until December 15, 2015 to return \$600.00 to the tenants, as a security deposit set out in the tenancy agreement, or apply for dispute resolution claiming against the deposit by that date. The tenants have not received the security deposit back from the landlord and the tenants have not been served with an application for dispute resolution by the landlord. Therefore, I am satisfied that the tenants have established a claim for double the amount, or \$1,200.00.

Since the tenants have been successful with the application the tenants are also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,300.00.

This order is final and binding and may be enforced.

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: October 12, 2016

Residential Tenancy Branch

