



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD. FF

Introduction

The Application for Dispute Resolution filed by the Tenants seeks the following:

- a. A monetary order in the sum of \$1829.
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord resides. The landlord acknowledged receipt of the Application for Dispute Resolution. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided:

The issues to be decided are as follows:

- a. Whether the tenants are entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a fixed term written tenancy agreement that provided that the tenancy would start on August 15, 2014. The rental unit was advertised for \$1795 per month. However, the Application for Rent set the rent at \$1797 and the tenancy agreement provided that the rent was \$1797 per month payable in advance on first day of each month. The tenant(s) paid a security deposit of \$900 at the start of the tenancy. On August 21, 2015 the parties entered into a second fixed term tenancy agreement that provided that the tenancy would start on August 21, 2015. The rent was \$1815 per month payable in advance on the first day of each month.

The tenancy ended on January 31, 2016.

The tenant(s) provided the landlord with his/her their forwarding address in writing on January 31, 2016.

On February 13, 2016 the landlord sent an e-mail transfer in the sum of \$470. The tenants did not accept the transfer as they were uncertain whether it would bar them from claiming the remainder of the security deposit.

On March 31, 2016 the landlord gave the tenants a cheque in the sum of \$332 being the balance of the security deposit after deductions were taken off. The tenants deposited this sum.

Law

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

Policy Guideline #17 includes the following:

“C. RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH DISPUTE RESOLUTION

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:
 - a landlord's application to retain all or part of the security deposit; or
 - a tenant's application for the return of the deposit.

unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

2. Where the tenant applies for return of the security deposit and the landlord later applies for dispute resolution for claims arising out of the tenancy and the hearings are not scheduled at the same time, the arbitrator will order the return of the security deposit to the tenant and the landlord's claims will be heard whenever scheduled after that, unless the parties and the arbitrator agree to having the landlord's claim heard at the same time.

3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;
- if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;
- if the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the dispute resolution process;
- if the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;
- whether or not the landlord may have a valid monetary claim.

4. In determining the amount of the deposit that will be doubled, the following are excluded from the calculation:

- any arbitrator's monetary order outstanding at the end of the tenancy;
- any amount the tenant has agreed, in writing, the landlord may retain from the deposit for monies owing for other than damage to the rental unit (see example B below);
- if the landlord's right to deduct from the security deposit for damage to the rental unit has not been extinguished, any amount the tenant has agreed in writing the landlord may retain for such damage.

5. The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:

- Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written

permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit ($\$400 \times 2 = \800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is $\$525.00$ ($\$800 - \$275 = \$525$).

- Example B: A tenant paid \$400 as a security deposit. During the tenancy, the parties agreed that the landlord use \$100 from the security deposit towards the payment of rent one month. The landlord did not return any amount. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount that remained after the reduction of the security deposit during the tenancy. In this example, the amount of the monetary order is $\$600.00$ ($\$400 - \$100 = \$300$; $\$300 \times 2 = \600).

- Example C: A tenant paid \$400 as a security deposit. The tenant agreed in writing to allow the landlord to retain \$100. The landlord returned \$250 within 15 days of receiving the tenant's forwarding address in writing. The landlord retained \$50 without written authorization.

The arbitrator doubles the amount that remained after the reduction authorized by the tenant, less the amount actually returned to the tenant. In this example, the amount of the monetary order is $\$350$ ($\$400 - \$100 = \$300 \times 2 = \600 less amount actually returned $\$250$).

Analysis

The tenants paid a security deposit of \$900 prior to the start of the tenancy on July 1, 2014. I determined the tenancy ended on January 31, 2016. I further determined the tenants provided the landlord with their forwarding address in writing on January 31, 2016. The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenants and the landlord failed to file an Application for Dispute Resolution within the 15 days from the later of the end of tenancy or the date the landlord receives the tenants' forwarding address in writing.

I determined that I should be doubling the sum of \$900 which is the amount of the security deposit. Example 3 of the Policy Guidelines set out above provides that an arbitrator should be doubling the amount of the security deposit less any amount the

tenant has agreed in writing even where the landlord has returned a portion of the security deposits within 15 days. Thus in this cases I determined the tenants are entitled to the sum of \$1468 calculated as follows ($\$900 \times 2 = \1800 less \$332 [the amount returned to the tenants on March 31, 2016] = \$1468).

I dismissed the tenants' claim of \$24 for the discrepancy between the advertised rent and the amount that was charged. The parties are bound by the tenancy agreement which they signed which provided that the rent was \$1797 and not the advertisement..

I determined the tenants are entitled to the sum of \$15 for the cost of a smoke detector. The smoke detector provided by the landlord at the start of the tenancy was no longer working and was out of date.

Monetary Order and Cost of Filing fee

I ordered the landlord to pay to the tenant the sum of \$1483 plus the sum of \$100 in respect of the filing fee for a total of \$1583.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent 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 landlord testified he has claims against the Tenants. He must first file an Application for Dispute Resolution before those claims can be considered.

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 17, 2016

Residential Tenancy Branch

