



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, FF; MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

This hearing also addressed the tenant's cross application for:

- authorization to obtain a return of all or a portion of their security and pet deposit pursuant to section 38;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not participate in the conference call hearing to present its claim; consequently the landlord's entire application is dismissed without leave to reapply.

Tenant KH and tenant PH (collectively the "tenant") attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant testified that on October 19, 2016 the tenants' application for dispute resolution was sent via registered mail to the landlord. The tenant provided a Canada Post receipt and tracking number as proof of service. Based on the testimony of the tenant and in accordance with sections 89 and 90 of the *Act*, I find that the landlord has been deemed served with the application on October 24, 2016, the fifth day after its registered mailing.

Issue(s) to be Decided

Are the tenants authorized to obtain a return of all or a portion of their security and pet deposit?

Are the tenants authorized to recover the filing fee for this application from the landlord?

Background and Evidence

As per the submitted tenancy agreement and testimony of the tenants, the tenancy began on March 1, 2016 on a month-to-month basis. Rent in the amount of \$3,000.00 was payable on the first of each month. The tenants testified that a written inspection report was completed at the start and end of tenancy. The tenants remitted a security deposit in the amount of \$1,500.00 and a pet deposit in the amount of \$1,500.00 at the start of the tenancy. The tenants vacated the rental unit on April 30, 2016.

The tenants testified that upon vacating the rental unit on April 30, 2016, the tenants provided the landlord with their forwarding address in writing. At the end of the tenancy, the tenants agreed in writing that the landlord could retain \$50.00 for an unpaid utility bill. The tenants testified that the landlord retained their entire pet deposit and only returned \$1,250.00 of their security deposit via e-transfer.

Analysis

Section 38 of the *Act* establishes that a landlord has fifteen days from the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing to file an arbitration application claiming against the deposits, or return the deposits. The tenant may waive their right to the return of the security deposit and pet deposit through written authorization to the landlord. In the absence of written authorization from the tenant, the landlord must return the security deposit and pet deposit or file an application within fifteen days. Should the landlord fail to do this, the landlord must pay the tenant double the amount of the security deposit and pet deposit.

Based on the tenants' undisputed testimony, the landlord received the forwarding address on April 30, 2016. The landlord filed an arbitration application to retain the deposits, but did not attend the hearing; therefore the landlord's application to retain the security deposit and pet deposit are dismissed.

The landlord returned \$1,250.00 of the security deposit but based on the tenants' undisputed testimony the landlord only received written authorization to retain \$50.00 of the security deposit. Based on this, I find the tenants are entitled to double the value of their security deposit agreed to at the end of their tenancy. Specifically I find the tenants

are entitled to \$1,500.00 less the \$50.00 the tenants authorized the landlord to retain for a security deposit of \$1,450.00 doubled to \$2,900.00 less the \$1,250.00 already paid by the landlord for a total of \$1,650.00

The landlord did not return the \$1,500.00 pet deposit and did not receive written authorization to retain it; therefore I find the tenants are entitled to double the value of their pet deposit in the amount of \$3,000.00.

As the tenants were successful in this application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for the application.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

I issue a monetary order in the tenant's favour in the amount of \$4,750.00 against the landlord.

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 21, 2016

Residential Tenancy Branch