



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

On May 5, 2016, the Tenants submitted an Application for Dispute Resolution for the Landlord to return of all or part of the pet damage deposit or security deposit, and to recover the filing fee for the Application.

The Tenant S.D. appeared at the hearing; however, the Landlords did not. The Tenant provided affirmed testimony that she served the Landlords with the Notice of Hearing using Canada Post Registered Mail on May 20, 2016. The Tenant provided the Registered Mail receipt number as proof of service. The Tenant testified that she checked the status of the delivery using the online service, and the delivery status shows that the female Landlord picked up the mail. I find that that the Notice of Hearing was served to the Landlords in accordance with sections 89 and 90 of the Act and the Notice of Hearing is deemed to have been received by the Landlords.

The hearing process was explained and the Tenant was asked if she had any questions. The Tenant provided affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Are the Tenants entitled to the return of the security deposit?
- Are the Tenants entitled to recover the cost of the filing fee?

Background and Evidence

The Tenant testified that the tenancy commenced in April 2014, and ended on August 31, 2014. Rent in the amount of \$1,000.00 was due on the first day of each month. The Tenants paid the Landlord a security deposit of \$500.00 and a pet damage deposit of \$500.00.

The Tenant testified that the Landlords did not return the security deposit or pet damage deposit after the Tenants moved out of the rental unit.

The Tenant testified that the Landlord did not perform a move in inspection at the start of the tenancy, and did not provide a move out inspection at the end of the tenancy.

The Tenant testified that there was no agreement that the Landlords could retain any amount of the security deposit or pet damage deposit.

The Tenant testified that the Tenants provided the Landlord with their forwarding address in writing on two occasions. The Tenant testified that their address was provided to the Landlords on January 13, 2015, and again on August 27, 2015. The Tenant provided documentary evidence that the Tenants address was provided to the Landlords on January 13, 2015.

Analysis

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

Section 38 (1) of the Act states that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must repay any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off states

If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

I find that the Tenants provided their forwarding address to the Landlords on January 13, 2015. There is no evidence before me that the Landlords applied for dispute resolution within 15 days of receiving the Tenants forwarding address. I find that there

was no agreement from the Tenants that the Landlords could retain the security deposit or pet damage deposit.

I find that the Landlord's breached section 38 of the Act. Pursuant to section 38(6) of the Act, the Landlords must pay the Tenants double the amount of the security deposit and pet damage deposit.

I order the Landlords to pay the Tenants the amount of \$2,000.00. I grant the Tenants a monetary order in the amount of \$2,000.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlords are cautioned that costs of such enforcement are recoverable from the Landlord.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenant's paid to make application for dispute resolution.

Conclusion

The Landlords failed to return the security deposit and pet damage deposit to the Tenants in accordance with the legislation.

The Tenants are granted double the amount of the security deposit and pet damage deposit. I grant the Tenants a monetary order in the amount of \$2,100.00.

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 03, 2016

Residential Tenancy Branch

