



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, CNL, O, MNSD, MNDC, FF

Introduction

This is an application brought by the tenant(s) requesting a monetary order in the amount of \$2600.00 and recovery of their \$100.00 filing fee.

The applicant(s) testified that the respondent was served with notice of the hearing by registered mail that was mailed on May 19, 2016; however the respondent did not join the conference call that was set up for the hearing.

Pursuant to section 90 of the Residential Tenancy Act, documents sent by registered mail are deemed served five days after mailing and therefore it is my finding that the respondent has been properly served with notice of the hearing and I therefore conducted the hearing in the respondent's absence.

The parties were affirmed.

Issue(s) to be Decided

The issue is whether or not the applicants have established monetary claim against the respondent, and if so in what amount.

Background and Evidence

The tenants testified that this tenancy began on July 1, 2015 with a monthly rent of \$1300.00, due on the first of each month.

The tenants further testified that, on July 7, 2015, they paid a security deposit of \$650.00, and a pet deposit of \$650.00 to the landlord.

The tenants further testified that, at the time they applied for dispute resolution, the landlord had not returned any of their deposits.

The tenants further testified that on February 15, 2016 they were given a two month Notice to End Tenancy for landlord use; however the landlord never paid them the

equivalent of one month compensation as required under the Residential Tenancy Act, and they paid the full rent right up to the end of their tenancy.

The tenants were therefore requesting a monetary order as follows:

Return of full security deposit	\$650.00
Return of full pet deposit	\$650.00
Compensation for section 49 notice	\$1300.00
Filing fee	\$100.00
Total	\$2700.00

The tenants further testified however, that after serving the landlord with notice of this hearing, the landlord paid them a total of \$2000.00, but has still held \$600.00 of their security deposit.

The tenants further testified that they did not give the landlord a forwarding address in writing prior to applying for dispute resolution.

Analysis

Security Deposit

Section 38 of the Residential Tenancy Act states:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing, (*my emphasis*)**

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

In this case the tenants did not give the landlord a forwarding address in writing, as required by the Residential Tenancy Act, prior to applying for arbitration.

Therefore at the time that the tenant(s) applied for dispute resolution, the landlord was under no obligation to return the security deposit, or pet deposit, and this application is premature.

I therefore dismiss this portion of the claim with leave to re-apply.

Compensation for Section 49 Notice To End Tenancy

Section 51 of the Residential Tenancy Act states:

51 (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Therefore, since the monthly rent for this unit was \$1300.00 the landlord was required to pay the tenants \$1300.00.

The landlord subsequently did pay \$2000.00 to the tenants, after they applied for dispute resolution, and therefore has paid the above compensation. I will not therefore issue an order for any further compensation; however since it was not paid until after the tenants applied for dispute resolution, I will allow the tenants request for recovery of their \$100.00 filing fee.

Conclusion

As stated above the tenants request for an order for return of security deposit is dismissed with leave to reapply.

I also will not be issuing any order for section 51 compensation, however I have issued a Monetary Order in the amount of \$100.00 to cover the tenants cost of the filing fee they paid for dispute resolution.

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 08, 2016

Residential Tenancy Branch