



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, OLC, FF

Introduction

On December 19, 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, for the Landlord to comply with the Act, Regulation, or tenancy agreement, and to recover the filing fee for the Application.

The Tenant S.D. appeared at the hearing; however, the Landlord did not. The Tenants provided affirmed testimony that they served the Landlord with the Notice of Hearing using Canada Post Registered Mail on December 23, 2016. The Tenants 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 Landlord picked up the mail. I find that that the Notice of Hearing was served to the Landlord 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 Tenants were asked if they had any questions. The Tenants provided affirmed testimony and were provided the opportunity to present their 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.

Preliminary and Procedural Matters

The Tenants requested to include the Landlords name in the Application as

Issues to be Decided

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

Background and Evidence

The Tenants testified that the tenancy commenced in May 1, 2015, as a month to month tenancy. Rent in the amount of \$700.00 was due on the first day of each month. The Tenants paid the Landlord a security deposit of \$350.00.

The Tenants testified that they moved out of the rental unit on November 30, 2016.

The Tenant testified that the Landlords did not return the security 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 Tenants testified that they provided the Landlord with their forwarding address in writing on November 30, 2016. The Tenants provided documentary evidence of a photograph of a note containing their forwarding address. The Tenants took a picture of the note in front of the Landlord's residence on November 30, 2016. The tenants testified that they put the note onto the Landlords mailbox.

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 Landlord on November 30, 2016. There is no evidence before me that the Landlord 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 Landlord could retain the security deposit or pet damage deposit.

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

I order the Landlord to pay the Tenants the amount of \$700.00. I grant the Tenants a monetary order in the amount of \$700.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is 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 Tenants' paid to make application for dispute resolution.

Conclusion

The Landlord failed to return the security deposit to the Tenants in accordance with the legislation.

The Tenants are granted double the amount of the security deposit and the cost of the hearing. I grant the Tenants a monetary order in the amount of \$800.00.

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: February 10, 2017

Residential Tenancy Branch