



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

On January 9, 2017, 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 Tenants and the Landlord appeared at the hearing. The hearing process was explained and the parties were asked if they had any questions. The parties testified that they exchanged the evidence that I have before me. The parties 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.

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 parties testified that the tenancy commenced on November 1, 2014, and ended on December 15, 2016. 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 Tenants testified that the Landlord did not return the security deposit or pet damage deposit within 15 days after the Tenants moved out of the rental unit and provided their forwarding address.

The Tenants testified that the parties participated in move out inspection on December 13, 2016.

The Tenants testified that they did not give permission for the Landlord to withhold any amount of the security deposit or pet damage deposit at that time.

The Tenant testified that he later agreed that the Landlord could retain \$50.00 for a damaged railing.

The Tenant testified that a Condition Inspection Report was completed at the end of the tenancy, and that the Tenants provided their forwarding address on the report. The Tenants referred to the Condition Inspection Report provided by the Landlord.

The Tenants testified that the Landlord returned \$500.00 of the security deposit and pet damage deposit on December 28, 2016.

The Tenants testified that they received an additional \$305.50 by e-transfer from the Landlords in January 2017, but they have not accepted the transfer pending the outcome of this hearing.

In response, the Landlord testified that the Tenants signed an addendum to the tenancy agreement that states the carpets in the rental unit must be professionally cleaned by the Tenant after they move out prior to having their pet & damage deposit returned.

The Landlord testified that they have paid the Tenants \$805.50 and that they held back \$194.50 for the cost of carpet cleaning.

The Landlord testified that she sent the Tenants the amount of \$305.50 sometime in January 2017.

Analysis

Section 5 of the Act states that Landlords and Tenants may not avoid or contract out of this Act or the regulations and any attempt to avoid or contract out of the Act or the regulations is of no effect.

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.

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

The term of the tenancy agreement that states the carpets in the rental unit must be professionally cleaned by the Tenant after they move out prior to having their pet & damage deposit returned is contrary to the provisions of section 38 of the Act and is not a valid term.

I find that the Tenants provided their forwarding address to the Landlord on December 13, 2016.

I find that the Tenants only agreed that the Landlord could retain \$50.00 from the deposits.

When the Landlord received the Tenants' forwarding address, the Landlord was required to repay the deposits to the Tenants or make an application for dispute resolution within 15 days of the end of the tenancy.

There is no evidence before me that the Landlord applied for dispute resolution within 15 days of the end of the tenancy. I find that there was no agreement from the Tenants that the Landlord could retain \$194.50 for the cost of carpet cleaning from the security deposit or pet damage deposit.

I find that the Landlord returned \$500.00 of the deposits within 15 days of the end of the tenancy; however, the Landlord failed to return the remaining \$450.00 of the deposit within 15 days.

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 or pet damage deposit that was not returned within 15 days.

Since the Tenant agreed that the Landlord could retain \$50.00, I find that the Landlord was required to return \$450.00. I order the Landlord to pay the Tenants the amount of \$900.00 which is double the amount of the deposit that was not repaid within 15 days.

The Landlord returned \$305.50 sometime in January; however the Tenants have not accepted the transaction.

Therefore I find that the Landlord owes the Tenants the amount of \$900.00.

Since it is unclear whether the e-transfer is still valid, I order that the Tenants to decline and delete the previously sent e-transfer for \$305.50.

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

I grant the Tenants a monetary order in the amount of \$1,000.00. 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.

Conclusion

The Landlord failed to return part of the security deposit or pet damage deposit to the Tenants in accordance with the legislation.

The Tenants are granted \$900.00 which is double the amount of the deposit that was not returned within 15 days.

The Tenants are granted \$100.00 for the cost of the filing fee. I grant the Tenants a monetary order in the amount of \$1,000.00.

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 17, 2017

Residential Tenancy Branch

