



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an application by the tenants for a monetary order for return of double the security and pet damage deposits paid to the landlords and for the return of the application filing fee.

Both tenants and one of the landlords appeared at the hearing. Both had witnesses available to be conferenced into the hearing if necessary. It was not necessary to hear from the witnesses.

The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, to make submissions to me and to respond to the submissions of the other party.

Service of the tenants' application and supporting evidence and of the landlords' responsive evidence was not at issue, with the exception of the fact that the tenants served both of the landlords at the same address and the female landlord testified that the other landlord was her son, that he had his own address, and that she did not deal with his mail on his behalf. The tenants testified that they had been given the same address for both of the landlords and they understood the son lived with his mother. As the tenants did not have another address for the male landlord, I find that the male landlord has been sufficiently served at his mother's address pursuant to s. 71(2).

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure but refer to only the relevant facts and issues in this decision.

Issue(s) to be Decided

Has there been a breach of s. 38 of the Act by the landlords?

Are the tenants entitled to return of the filing fee?

Background and Evidence

This tenancy was a six month fixed term tenancy that began in November, 2015. It ended on or about July 31, 2016. The tenants paid the landlords a security deposit of \$587.50 and a pet deposit of \$100.00 around the beginning of the tenancy, which the landlords continue to hold. The tenants vacated the premises on or about July 31, 2016.

The tenants provided the landlords with a written notice of the forwarding address to return the security deposit to, by including it on the condition inspection report on July 31, 2016. The landlords put that condition inspection report into evidence.

The condition inspection report does not indicate that the tenants signed over a portion of the security deposit and the landlord who attended the hearing testified that although there was some attempt to reach agreement on an amount to be retained by the landlords as a result of the tenant's failure to mow the grass, no agreement was reached.

The landlords have not applied to retain any portion of the security or pet damage deposits. The landlords claimed the tenants had left the rental unit unclean and damaged but have not yet made an application for compensation.

Analysis

The Act contains comprehensive provisions dealing with security and pet damage deposits. Section 38 requires that the landlord handle the security deposit as follows:

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,

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.

...

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(Emphasis added)

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the landlords are in breach of this section of the Act. I accept the female landlord's evidence that no agreement was reached allowing the landlords to retain any portion of the security or pet deposit. The landlords did not apply within 15 days of the end of the tenancy or receipt of the tenants' forwarding address, to retain a portion of the deposits. The parties agreed that there has been no order made with respect to these deposits.

The security deposit is held in trust for the tenant by the landlords, who may not simply keep it without establishing the right to do so or obtaining the tenant's agreement. If the landlords and the tenants are unable to agree to the repayment of the security deposit or to deductions to be made to it, the landlords must file an application within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later.

The landlords may still file an application for alleged rent and alleged damages; however, the issue of the security deposit has now been conclusively dealt with in this hearing.

Having made the above findings, I must order, pursuant to sections 38 and 67 of the Act, that the landlords pay the tenants the total sum of **\$1,475.00**, comprised of double the total of the security and pet deposit (2 x \$687.50) plus the \$100.00 fee for filing this application.

Conclusion

The tenants are given a formal order in the above terms and the landlords must be served with a copy of this order as soon as possible. Should the landlords fail to comply with it, it may be filed in the Small Claims division of the Provincial Court and enforced as an order of that Court.

This decision is final and binding on the parties, except as otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Residential Tenancy Act*.

Dated: February 20, 2017

Residential Tenancy Branch