



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants for a monetary order for return of all or part of the pet damage deposit or security deposit.

The tenants were represented at the hearing by an agent, and both landlords also attended the hearing. All parties gave affirmed testimony and were given the opportunity to question each other. All evidence has been exchanged, and is considered in this Decision.

Issue(s) to be Decided

Have the tenants established a monetary claim as against the landlords for return of all or part or double the amount of the security deposit?

Background and Evidence

The tenants' agent testified that the tenants are both physically & mentally challenged on numerous medications and should be in a care home, but none have an opening in the near future. The tenants are trying to cope with mental and physical challenges, and could not attend today because of emotional problems. They are on a small budget, have no car, and no laundry facilities so can't get laundry done, but get their clothing from thrift stores.

The rental unit was being gutted for renovations so if floors weren't swept at the end of the tenancy, it caused no problem to the landlords.

The tenants' agent also submits that the landlords had no intention of returning the security deposit to the tenants and the house wouldn't sell so they wanted the tenants out as soon as possible.

On November 14, 2016 the tenants' agent sent a letter to the landlords by regular mail which contained the tenants' forwarding address, and a copy has been provided. The landlords have not returned any portion of the security deposit to the tenants.

The first landlord (JT) testified that the tenancy began on May 1, 2011 on a month-to-month basis, although the tenants were permitted to move in on April 15, 2011 without paying rent until May 1, 2011. Rent in the amount of \$975.00 was payable in advance on the last day of each month for the following month, and \$75.00 of that was to cover utilities. A written tenancy agreement was signed by the parties but a copy has not been provided for this hearing. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$400.00, which is still held by the landlords, and no pet damage deposit was collected. The rental unit is a basement suite and the upper level is also tenanted.

The tenants called the landlords saying that they found another place to live that suited their needs, and the landlords agreed to short notice to vacate because the landlords knew that they would have to clean a horrible mess and renovate in order to make the rental unit livable or sellable.

The tenants actually moved out of the rental unit approximately October 15, 2016, and the landlord acknowledges receiving the letter dated November 14, 2016 which contains the tenants' forwarding address.

The tenants were told several times during the tenancy that they had to clean up or they would have to discuss ending the tenancy, and the tenants responded on more than one occasion that the landlords should keep the security deposit to pay for it. The landlords had also agreed to allow the tenants to move out without notice in a verbal conversation, and neither agreement was in writing.

The landlords filed an application for dispute resolution about a week ago claiming against the security deposit but have not yet received a hearing date and therefore have not yet served the tenants.

The second landlord (BT) testified that after a year or two into the tenancy, things started to go downhill, and the landlords had asked the tenants over and over to clean the rental unit. The carpet had been demolished by cat urine, and the people in the upper level of

the rental home were complaining about the smell. The landlords had to get something done, hoping to sell, but realtors told the landlords it could not be sold in its condition.

The tenants moved out of their own accord and told the landlords to keep the security deposit.

Analysis

The *Residential Tenancy Act* requires a landlord to return any security deposit and/or pet damage deposit to a tenant in full or make an application for dispute resolution claiming against the deposit(s) within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, unless the tenant agrees otherwise in writing. If the landlord does neither within that 15 day period, the landlord must repay the tenant double the amount.

In this case, the landlord testified that the amount of the security deposit collected at the beginning of the tenancy was \$400.00, and the tenancy ended on October 31, 2016, although the tenants moved out sometime earlier.

The parties agree that the landlords received the tenants' forwarding address in writing in the letter dated November 14, 2016, which I find is deemed to have been received 5 days after mailing it, or November 19, 2016. The landlords did not have the tenants' written consent to keep any portion of the security deposit, and the landlords did not return any portion of it. One of the landlords testified that the landlords filed an application for dispute resolution claiming against the security deposit approximately a week ago but do not yet have a hearing package to serve on the tenants. The time for making such an application would have expired 15 days after November 19, 2016, or by December 4, 2016.

I find that the landlords have not complied with the *Act* and the tenants are entitled to double the amount of the security deposit.

Since I do not have any application before me by the landlords, I make no findings of fact or law with respect to the merits of the landlords' application which has not yet been served on the tenants.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$800.00.

This order is final and binding and may be enforced.

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: March 03, 2017

Residential Tenancy Branch

