



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking a monetary order for return of all or part of the pet damage deposit or security deposit and to recover the filing fee from the landlords for the cost of the application.

Both tenants and one of the landlords attended the hearing, and the landlord also represented the other landlord. The landlord and one of the tenants gave affirmed testimony and the tenant also interpreted the proceedings to the other tenant. The parties were given the opportunity to question each other and to give closing submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed 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 tenant testified that this month-to-month tenancy began on August 23, 2014 and ended on December 24, 2015. Rent in the amount of \$1,700.00 per month was payable on the 23rd day of each month. Prior to the beginning of the tenancy the landlords collected a security deposit from the tenants in the amount of \$850.00 which is still held in trust by the landlords, and no pet damage deposit was collected. There is no written tenancy agreement. The rental unit is a suite in the upper level of a house, and the lower level is also tenanted.

A hearing was held by the Residential Tenancy Branch which resulted in a Decision of the director granting the tenants a monetary order for return of the security deposit. The landlords did not attend the hearing and applied for a Review. A Review Hearing was granted which was held on December 23, 2016 and a resulting Review Hearing Decision dated January 16, 2017 has been provided for this hearing. It orders that the previous Decision and Order dated September 28, 2016 are set aside, that the tenants' application is dismissed with leave to reapply, and specifies that the date the landlords received the tenants' forwarding address in writing is deemed to be January 16, 2017.

The landlords have not returned any portion of the security deposit and have not served the tenants with an application for dispute resolution claiming against the security deposit. The tenants claim double the amount, or \$1,700.00 and recovery of the \$100.00 filing fee.

The landlord testified that the landlords were in Europe and did not receive the hearing package for the first hearing. The landlord returned on October 13, 2016 and received a text message from the tenant asking for payment.

The landlord attended at the Residential Tenancy Branch and provided photographs and other evidence, and the personnel told the landlord they would see if the application would be reviewed.

A new review hearing was held on December 23, 2016 which ordered that the tenants' application was dismissed with leave to reapply and the previous Decision and Order were set aside. The landlord was told by staff at the Residential Tenancy Branch that the landlords didn't have to do anything and if the tenants want to reapply, they can. The landlords did exactly what they were told to do.

The landlords received the January 16, 2017 Review Hearing Decision shortly after January 16, 2017, and did not file an application for dispute resolution claiming against the security deposit.

Analysis

It appears that the landlord is confused about the information sought or given by the Residential Tenancy Branch. A landlord has 15 days from the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return a security deposit to a tenant in full or make an application for dispute resolution claiming against the deposit within that 15 day period. If the landlord fails to do either, the landlord must repay the tenant double the amount.

I explained to the parties the legal principle of res judicata which is a doctrine that prevents rehearing of claims and issues arising from the same cause of action between the same parties, after a final judgment was previously issued on the merits of the case. I indicated that I would be reviewing the previous Decisions to ensure that I did not make a finding on a matter that had already been heard and decided upon.

The tenants were granted leave to reapply for a monetary order for return of the security deposit, and this is the tenants' re-application. The Review Hearing Decision clearly states that a finding has been made that the landlords received the tenants' forwarding address in writing on January 16, 2017, and the landlord agrees that the Review Hearing Decision was received by the landlords shortly after January 16, 2017. The landlords have not returned any portion of the security deposit and have not made an application for dispute resolution claiming against it within 15 days of that date. Therefore, I find that the landlords must repay double the amount, or \$1,700.00.

Since the tenants have been successful with the application, the tenants are also entitled to recovery of the \$100.00 filing fee.

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 \$1,800.00.

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 30, 2017

Residential Tenancy Branch