



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

On February 9, 2017 a hearing was conducted via the conference call between these two parties. The tenants served the landlord by process server on December 13, 2016, in person with the notice of hearing package seeking a monetary order for return of the pet damage and security deposits, for money owed or compensation for damage or loss and recovery of the filing fee. The tenants were granted a monetary order for double the combined security and pet damage deposits and recovery of the filing fee. The landlord applied for a review of this decision. The arbitrator ordered the decision and accompanying order suspended pending a review hearing for the tenants' application.

This is a review hearing granted for the tenants' application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the landlord served the notice of a review hearing package to an incorrect address at unit # B409 as opposed to the listed address provided on the tenants' application for dispute as D307. The landlord confirmed that she used an old address from a copy of a cancelled cheque from the tenants. Although the tenants were not properly served, the tenants noted no issues in proceeding with the hearing. As such, I find for the purposes of this hearing that both parties have been sufficiently served as per section 90 of the Act.

It was clarified with both parties that the tenants claim for utilities were withdrawn as they would be resolved in a different manner.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for return of double the pet damage and security deposits and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on December 1, 2015 on a fixed term tenancy ending on June 30, 2016 as per a signed tenancy agreement dated November 1, 2015. The monthly rent was \$1,500.00 payable on the 1st day of each month. A security deposit of \$750.00 and a pet damage deposit of \$750.00 were paid on November 1, 2015.

The tenants seek a monetary claim of \$3,000.00 for return of double the combined security (\$750.00) and the pet damage (\$750.00) deposits.

Both parties agreed that the fixed term tenancy ended on June 30, 2016, but the tenants stated that the tenancy ended on September 7, 2017 when all of their possessions were removed from the property. The landlord disputes this stating that the tenancy ended on September 10, 2016 when the landlord had full possession of rental property. Both parties agreed that the tenants provided their forwarding address in writing on November 6, 2016 at the landlord's place of business. The tenant has provided a copy of a signed receipt of the notification letter dated November 6, 2016.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit and pet damage deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security and pet damage deposits.

Both parties agreed that the landlord still holds the combined \$1,500.00 deposits as of the date of this hearing and that the landlord did not file an application for dispute for permission to retain it within 15 days of the tenancy ending or when the landlord

received the tenants' forwarding address in writing on November 6, 2016. Although both parties argued over the date of the end of tenancy, I find as the later date of November 6, 2016 when the landlord received the tenant's forwarding address in writing is when the 15 days allowed shall be counted.

I find based upon the direct testimony of both parties that the tenant has established a claim under section 38 for return of the original combined \$1,500.00 deposits.

I also find as the landlord failed to comply with section 38 of the Act that section 38 (6) requires that the landlord pay a monetary award equal to the \$1,500.00

The tenants have established a monetary claim of \$3,000.00.

The tenants having been successful are entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenants are granted a monetary order for \$3,100.00.

This order must be served upon the landlord. Should the landlord fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: April 11, 2017

Residential Tenancy Branch