



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This is an application brought by the tenant requesting a monetary order for return of security/pet deposit amount withheld by the landlord plus any applicable penalties. The applicant is also requesting recovery of his \$100.00 filing fee.

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

The issue is whether or not the applicant has established monetary claim against the respondent, and if so in what amount.

Background and Evidence

The parties agree that this tenancy began on September 15, 2013 and that at the beginning of the tenancy the tenant paid both the security deposit of \$750.00, and a pet deposit of \$750.00.

The parties also agree that this tenancy ended on August 31, 2016 and the landlord admits that he received a forwarding address in writing from the tenant in September of 2016.

The parties also agree that the landlord withheld \$600.00 of the security/pet deposits and returned \$900.00 to the tenant.

The tenant testified that, he has never given the landlord any permission to keep any or all of his security/pet deposit, and therefore he is requesting an order that the deposits be returned double, as required under the act.

The landlord testified that he withheld a portion of the security/pet deposit due to the need for cleaning and damages; however he admits he did not apply for dispute resolution to get an order to keep any or all of the deposits.

The landlord stated that he believed he was allowed to keep the deposits because on the tenancy agreement he had crossed out the section that requires that the tenant agrees in writing, and both he and the tenant had initialed that portion of the tenancy agreement.

Analysis

Section 13 of the Residential Tenancy Regulations states:

Standard terms that must be included in a tenancy agreement

13 (1) A landlord must ensure that a tenancy agreement contains the standard terms.

(1.1) The terms set out in the schedule are prescribed as the standard terms.

Further, one of those prescribed standard terms set out in the schedule is the following:

Security deposit and pet damage deposit

2 (1) The landlord agrees

- (a) that the security deposit and pet damage deposit must each not exceed one half of the monthly rent payable for the residential property,
- (b) to keep the security deposit and pet damage deposit during the tenancy and pay interest on it in accordance with the regulation, and
- (c) to repay the security deposit and pet damage deposit and interest to the tenant within 15 days of the end of the tenancy agreement, unless

- (i) the tenant agrees in writing to allow the landlord to keep an amount as payment for unpaid rent or damage, or
- (ii) the landlord makes an application for dispute resolution under the *Residential Tenancy Act* within 15 days of the end of the tenancy agreement to claim some or all of the security deposit or pet damage deposit.

(2) The 15 day period starts on the later of

- (a) the date the tenancy ends, or
- (b) the date the landlord receives the tenant's forwarding address in writing.

Therefore, it is my finding that the landlord and the tenant, did not have the right to cross out the section requiring the tenant to agree in writing.

Further, section 38 of the Residential Tenancy Act states that, if the landlord does not either return the security/pet deposit, get the tenants written permission to keep all or part of the security/pet deposit, or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security/pet deposit.

The landlord has not returned the tenants full security/pet deposit or applied for dispute resolution to keep any or all of tenant's security/pet deposit and the time limit in which to apply is now past.

This tenancy ended on August 31, 2016 and the landlord has admitted that he had a forwarding address in writing by September 2016, and there is no evidence to show that the tenant's right to return of the deposit has been extinguished.

Therefore the landlord must pay double the amount of the security/pet deposit to the tenant, less any amount that has already been returned.

The tenant paid a security/pet deposit of \$1500.00, and therefore the landlord must pay \$3000.00, minus the \$900.00 that was already returned, leaving a balance of \$2100.00.

I also allow the tenants request for recovery of his \$100.00 filing fee..

Conclusion

Pursuant to sections 38, 67, and 72 of the Residential Tenancy Act I have issued a monetary order for the respondent to pay \$2200.00 to the applicant.

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 21, 2017

Residential Tenancy Branch