



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

On November 1, 2016, the Tenants submitted an Application for Dispute Resolution for the Landlords to return of all or part of the pet damage deposit or security deposit, and to recover the filing fee for the Application.

The Tenant Ms. S.R. appeared at the hearing with her agent; however, the Landlords did not. The Tenant provided affirmed testimony that she served both Landlords separately with the Notice of Hearing using Canada Post Registered Mail on November 2, 2016. The Tenant provided the Registered Mail receipt numbers as proof of service. The Landlord provided 29 pages of documentary evidence in response on Mar 10, 2017. I find that that the Notice of Hearing was served to each of the Landlords in accordance with sections 89 and 90 of the Act, and the Notice of Hearing is deemed to have been received by the Landlords.

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

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenants' application only includes a claim for the return of the security deposit and provides a monetary claim amount of \$1,600.00. The Tenants provided a monetary order worksheet that includes additional monetary claims. The Tenants did not amend their application to include the additional amounts. The Landlords were not served with

an amended application. I find that the Tenants are limited to the claim within the Application that was served on the Landlords.

Pursuant to section 78(1) of the Act, I have corrected an arithmetic error on my own initiative.

Issues to be Decided

- Are the Tenants entitled to the return of double the security deposit?
- Are the Tenants entitled to recover the cost of the filing fee?

Background and Evidence

The Tenants testified that the tenancy commenced on February 15, 2014, and ended on September 30, 2016. Rent in the amount of \$1,640.00 was due on the first day of each month. The Tenants paid the Landlord a security deposit of \$800.00 and a pet damage deposit of \$800.00.

The Tenants testified that the Landlords did not return the security deposit or pet damage deposit to the Tenants after the Tenants moved out of the rental unit on September 30, 2016.

The Tenants testified that they attended a move out inspection on September 30, 2016, and the Landlord handed them an envelope with a cheque in the amount of \$681.00.

The Tenants testified that there was no agreement that the Landlords could retain any amount of the security deposit or pet damage deposit.

The Tenants testified that they provided the Landlord with their forwarding address in writing on September 14, 2016, prior to the end of the tenancy. The Tenant provided documentary evidence of an email sent to the Landlords dated September 14, 2016, which included the Tenants forwarding address. The Tenant testified that she knows the Landlord received the email because the Landlord responded to it by sending an email back.

The Tenants testified that they are not aware of any legal reason that entitled the Landlord to withhold any amount of the security deposit and pet damage deposit.

The Tenants are seeking the return of double the deposits.

Analysis

Section 38 (1) of the Act states that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must repay any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off states

If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

I find that each Landlord was served with the Notice of Hearing but failed to attend the hearing.

I find that the Tenants provided their forwarding address to the Landlords on September 14, 2016.

There is no evidence before me that the Landlords applied for dispute resolution within 15 days of the end of the tenancy. I also find that there was no agreement from the Tenants that the Landlords could retain any amount of the security deposit or pet damage deposit.

I find that the Landlord's breached section 38 of the Act. Pursuant to section 38(6) of the Act, the Landlords must pay the Tenants double the amount of the security deposit and pet damage deposit, ~~that was not returned within 15 days from the end of the tenancy.~~ **less the amount already returned.**

Double the security deposit and pet damage deposit amounts to \$3,200.00. After setting off the amount of \$681.00 that was returned, I find that the Landlords owe the Tenants \$2,519.00.

I order the Landlords to pay the Tenants the amount of ~~\$1,838.00.~~ **\$2,519.00.**

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenant's paid to make application for dispute resolution.

I grant the Tenants a monetary order in the amount of ~~\$1,938.00~~ **\$2,619.00**. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlords are cautioned that costs of such enforcement are recoverable from the Landlords.

Conclusion

The Landlords failed to return the security deposit and pet damage deposit to the Tenants in accordance with the legislation.

The Tenants are granted double the amount of the security deposit and pet damage deposit that was not returned. I grant the Tenants a monetary order in the amount of ~~\$1,938.00~~ **\$2,619.00**.

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: May 03, 2017

Corrected: May 10, 2017

Residential Tenancy Branch