



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide sworn testimony, to present evidence and to make submissions.

Issues

Is the tenant entitled to a return of all or a portion of the security deposit, including double the amount?

Is the tenant entitled to compensation for loss?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenancy began on March 1, 2016 and was for a 12 month fixed term ending on February 28, 2017. The tenants ended the tenancy early and vacated the rental unit on July 10, 2016. The tenants paid a security deposit of \$600.00 and a pet deposit of \$300.00 at the start of the tenancy which the landlord continues to hold.

The tenant is claiming a return of the security deposit and pet deposit arguing that the landlord failed to return the both deposits within 15 days of the date the landlord received the tenants forwarding address in writing. The tenants provided a forwarding address in writing by regular mail on October 15, 2016.

The tenants are also claiming moving costs and argue they had to move out of the rental unit as a result of the landlord's failure to take action to remedy a rodent infestation. The tenants are also claiming \$84.00 as replacement cost for a rug they claim was chewed and damaged by rodents.

The landlord acknowledged receipt of the forwarding address sometime in October 2016. The landlord claims the tenants' forfeited return of the pet deposit and security deposit as per terms agreed to in the tenancy agreement.

The landlord disputes the tenants claim that they had no option but to vacate as a result of the alleged rodent infestation. The landlord disputes the claim for damage to the rug and testified that the rug could have been chewed by the tenants pet versus rodents and that it could have been pre-existing damage.

Analysis

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has, at the end of the tenancy, consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. A landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit, pet deposit, or both, as applicable.

Section 5 of the Act states that landlords and tenants may not contract out of the Act and any attempt to do so is of no effect.

I find the tenants did provide a forwarding address in writing to the landlord. The tenant's security deposit and pet deposit was not refunded within 15 days as required by section 38 of the Act and the doubling provisions of section 38 therefore apply. Any agreement entered into by the tenants at the beginning of the tenancy requiring forfeiture of the deposits if certain conditions were not met is an attempt to contract out of the Act and of no effect.

I allow the tenants claim for return of the security deposit and pet deposit and award an amount of \$1800.00, which is double the original security and pet deposit of \$900.00.

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

The tenants' claim for moving costs is dismissed. The tenants have failed to establish that they incurred moving costs as a result of the landlord's non-compliance with the Act or the tenancy

agreement. The tenants provided insufficient evidence to establish that they notified the landlord in writing of their intentions to end the tenancy early due to a breach of a material term. Nor did the tenants provide any evidence to support that they provided written notice to the landlord to rectify the problem by a certain deadline before ending the tenancy. Further, the tenants failed to mitigate any losses as they could have first attempted to file an application with the Residential Tenancy Branch for order requiring the landlord to rectify the alleged rodent problem.

The tenants' claim for damage to the rug is also dismissed. The tenants have failed to provide any invoices or quotes for the initial cost and/or replacement cost of the rug in support of the loss claimed.

As the tenants were only partly successful in this application, I find that the tenants are entitled to recover one half the \$100.00 filing fee paid for this application from the landlord for a total monetary award of \$1850.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenants a Monetary Order in the amount of \$1850.00. Should the landlord fail to comply with this Order, this 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: May 23, 2017

Residential Tenancy Branch