



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. A monetary order in the sum of \$600 for the return of the security deposit.
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was filed by the Tenants was served on the Landlord by mailing, by registered mail to where the Landlord resides on December 3, 2016. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to the return of double the security deposit/pet deposit?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered an oral tenancy agreement that provided that the tenancy would start in November 2012. The tenancy ended on February 22, 2016. The rent was \$1200 per month payable in advance on the first day of each month. The tenants paid a security deposit of \$600 at the start of the tenancy.

The landlord mailed a cheque to the tenants in the sum of \$300 on February 22, 2016. The tenants have not cashed the cheque and it is stale dated. The tenant(s) provided the landlord with his/her their forwarding address in writing on April 22, 2016. .

Law

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

Policy Guideline #17 includes the following:

“3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant’s forwarding address is received in writing;
- if the landlord has claimed against the deposit for damage to the rental unit and the landlord’s right to make such a claim has been extinguished under the Act;
- if the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the dispute resolution process;
- if the landlord has obtained the tenant’s written agreement to deduct from the security deposit for damage to the rental unit after the landlord’s right to obtain such agreement has been extinguished under the Act;
- whether or not the landlord may have a valid monetary claim.

4. In determining the amount of the deposit that will be doubled, the following are excluded from the calculation:

- any arbitrator’s monetary order outstanding at the end of the tenancy;
- any amount the tenant has agreed, in writing, the landlord may retain from the deposit for monies owing for other than damage to the rental unit¹⁸ (see example B below);

- if the landlord's right to deduct from the security deposit for damage to the rental unit has not been extinguished¹⁹, any amount the tenant has agreed in writing the landlord may retain for such damage.

5. The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:

- Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit ($\$400 \times 2 = \800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is $\$525.00$ ($\$800 - \$275 = \$525$).

Analysis

The tenants paid a security deposit of \$600 prior to the start of the tenancy in November 2012. I determined the tenancy ended on February 22, 2016. I further determined the tenants provided the landlord with their forwarding address in writing on April 22, 2016. The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenants and the landlord failed to file an Application for Dispute Resolution within the 15 days from the later of the end of tenancy or the date the landlord receives the tenants' forwarding address in writing. As a result I determined the tenants have established a claim against the landlord for double the security deposit ($\$600 \times 2 = \1200).

The landlord returned \$300 of the deposit in late February. This sum would have been deducted from the \$1200 award had the cheque been cashed. However, the tenants did not cash the cheque and it is still dated. I determined it is no longer negotiable and thus the monetary award is for \$1200..

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$1200 plus the sum of \$100 in respect of the filing fee for a total of \$1300.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this 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 final and binding on both parties.

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: June 02, 2017

Residential Tenancy Branch