



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kiwanis Village
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This is an application brought by the executor of the tenants estate, requesting a monetary order in the amount of \$845.06.

A substantial amount of 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.

Both parties were affirmed.

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 1, 2006 and that the rental unit was completely emptied by August 28, 2015..

The parties also agree that the landlord received a forwarding address in writing on August 21, 2015, along with the notice that the tenancy would be ending on August 31, 2015.

The applicant testified that the tenant passed away on August 15, 2015, and yet the landlords still charged the tenant for both September 2015 rent, and September 2015 Hydro and she believes that this money should be returned.

The applicant further testified that she believes the rental unit did not re-rent in the month of September, due to the fact that it needed repairs.

The applicant further testified that the landlords only returned \$16.53 of the tenant security/pet deposit and pet deposit even though they did not give the landlord any written permission to keep any or all of the security/pet deposit. The applicant is therefore requesting that the remainder of the security/pet and pet deposits be returned.

The applicant further testified that the tenant had paid a security/pet deposit of \$200.00, and had paid two pet deposits of \$100.00, the first paid to the original landlord, and then a second paid again when the landlords stated no pet deposit had ever been paid.

The applicant is therefore requesting a monetary order as follows:

Return of September 2015 rent	\$417.00
Return of September 2015 Hydro	\$25.00
Return of security deposit plus interest	\$206.36
Return of pet deposit plus interest	\$100.17
Return of second pet deposit	\$100.00
Filing fee	\$100.00
Total	\$948.53

The landlord testified that, after the tenant passed away on August 15, 2015, they got official notice that the rental unit would be vacated by August 31, 2015, and it subsequently was actually vacated completely by August 28, 2015.

The landlord further testified that, although they attempted to re-rent it for the month of September 2015, they were unable to secure a tenant for the rental unit until October 1, 2015.

The landlord further testified that, the delay in renting the unit had nothing to do with any need for repairs; it was simply because they were unable to find a tenant able to take the rental unit before October 1, 2015.

The landlord further testified that, they did not get any written permission to keep any or all of the security/pet deposit as the tenants daughter refused to sign permission, and

therefore they just deducted their costs from the security/pet deposit, and pet deposit and returned \$16.53 by cheque to the estate of the tenant.

In response to the landlord's testimony the applicant testified that they did not agree to charges and that's why they did not sign their permission for the landlord to keep the security/pet deposit. She further stated that they have never cashed the \$16.53 cheque and therefore by now it would be stale dated.

Analysis

It is my decision that I will not order the return of the rent and Hydro charges for the month of September 2015 because, even, though the landlord attempted to do so, the landlord was unable to re-rent the unit for the month of September 2015, and therefore that rent and Hydro charge would still be payable by the estate of the deceased.

The tenant stated she believes it was not re-rented in September 2015 because the landlords were doing repairs, however the landlords deny that claim, and the tenant has provided no evidence in support of that claim.

It is my decision however that the landlords did not have the right to retain any or all of the security/pet deposit.

The evidence shows that the tenant paid a security deposit of \$200.00, and a pet deposit of \$100.00, for a total of \$300.00. The applicant claims that a second pet deposit was paid, however it is my finding that she is not met the burden of proving that claim.

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 landlords only returned \$16.53 of the combined \$300.00 security/pet deposit.

The landlords did not get any written permission to keep any or all of the security deposit, nor had they applied for dispute resolution to keep any or all of tenant's security/pet deposit, and the time limit in which to apply is well now past.

This tenancy ended on August 28, 2015 and the landlord had a forwarding address in writing by August 21, 2015 and there is no evidence to show that the tenant's right to return of the deposit has been extinguished.

Therefore even though the tenant has not applied for double the security/pet deposit, the Residential Tenancy Act states that the landlord must pay double the amount of the security/pet deposit to the tenant.

The evidence shows that the tenant had paid a combined security/pet deposit of \$300.00, and therefore the landlords must pay \$600.00, plus interest on the deposits totaling \$6.53, for a final total of \$606.53. The landlords had sent a cheque for \$16.53, however that cheque was never cashed, and by now that cheque would be stale dated and therefore, pursuant to sections 38 and 67 of the Residential Tenancy Act, I order the full amount of \$606.53 be paid.

Further, since I have allowed a substantial claim, I also allow the applicants request for recovery of the \$100.00 filing fee.

Conclusion

I have issued an order for the respondents to pay \$706.53 to the applicants.

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 06, 2017

Residential Tenancy Branch