



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking a monetary order for return of all or part of the pet damage deposit or security deposit.

One of the tenants attended the hearing and represented the other tenant. Similarly, one of the landlords attended and represented the other landlord. The parties each gave affirmed testimony and were given the opportunity to question each other.

The tenant questioned whether or not the late evidence of the tenants will be considered, and the landlord advised that he had not received it. I found that the evidence was not late and the landlord did not oppose inclusion of it. No other issues with respect to service or delivery of documents or evidence were raised, and all evidence of the parties has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Have the tenants established a monetary claim as against the landlords for all or part or double the amount of the security deposit?

Background and Evidence

The tenant testified that this fixed-term tenancy began on September 1, 2016 and expired on April 30, 2017 when the tenants were required to vacate the rental unit. The tenants actually moved out on April 26, 2017. Rent in the amount of \$1,750.00 per month was payable on the 1st day of each month and there are no rental arrears. On August 1, 2016 the landlords collected a security deposit from the tenants in the amount of \$1,750.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is an apartment-type suite, and a copy of the tenancy agreement has been provided as evidence for this hearing.

No move-in condition inspection report was completed at the beginning of the tenancy, and the landlords completed a move-out condition inspection report in the absence of the tenants without arranging any time for such an inspection to take place.

The tenant further testified that on April 25, 2017 the tenants requested by text message that the landlords return the security deposit by e-mail transfer because that's how rent was paid, and the text message contained the information the landlords required to make that e-transfer. Copies of text messages have been provided as evidence for this hearing wherein the tenants request the deposit by e-transfer on April 25, 2017 and a response from the landlord the same day agreeing once the inspection is completed and requesting the tenant provide a mailing address to forward mail to. A forwarding address is then provided by the tenant.

The landlords have not returned any portion of the security deposit to the tenants and have not served the tenants with an application for dispute resolution claiming against it. The tenants claim double the amount, or \$3,500.00 and recovery of the \$100.00 filing fee.

The landlord testified that the landlords were new to being landlords, and were not aware that only half a month's rent could be collected as a security deposit, and testified that the other tenant offered it to ensure that the tenants were able to secure the tenancy.

The parties completed a move-in condition inspection report and a copy has been provided, but it is not signed by a landlord or by a tenant. The landlord testified that was an over-sight. The parties had exchanged text messages about the move-out condition inspection but the tenants didn't show up and the landlord completed the report in their absence.

The landlord further testified that there was a leak in the bathroom for a week or 2 that the tenants didn't tell the landlord about, which a tenant is required to do.

The landlord has also provided copies of the text messages of April 25, 2017 and the landlord attempted to reach the tenants after that. The tenants didn't respond to any of the landlord's phone calls or text messages until May 4, 2017 when the landlord received a message from the other tenant saying the tenants were in Mexico. That is the first time the tenants got back to the landlords about anything.

The landlords have provided photographs which the landlord testified were taken on April 26 and 27, 2017. The landlord has not applied for dispute resolution claiming against the security deposit because the landlord has been very busy with other issues, but disputes the tenants' claim that the security deposit should be returned due to damages and cleaning required at the end of the tenancy.

The rental unit was re-rented for May 4, 2017.

Analysis

The *Residential Tenancy Act* is clear: a landlord must return any security deposit or pet damage deposit in full to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an application for dispute resolution claiming against the deposit(s) within that 15 day period. If the landlord fails to do either, the landlord must re-pay the tenant double the amount.

The *Act* also states that a landlord's right to make a claim against the security deposit for damages is extinguished if the landlord fails to ensure that the move-in and move-out condition inspection reports are completed, and the regulations go into detail of how that is to happen. A tenant's right to return of a security deposit is extinguished if the tenant, having been given at least 2 opportunities to schedule the inspection, fails to participate. Also, the reports must be dated and signed by the landlord and the tenant. In this case there is no evidence that the landlords gave a second opportunity to schedule the move-out inspection, and there are no signatures on the move-in condition inspection report. Therefore, I find that the tenants' right to return of the security deposit is not extinguished.

The parties exchanged text messages, and the landlord acknowledged that the forwarding address was received on April 25, 2017. Considering the fixed term I find that the tenancy ended on April 30, 2017. The landlords have not returned any portion of the security deposit and have not made an application for dispute resolution claiming against it. It does not suffice to dispute the tenant's right to the return of the deposits in a hearing where the tenants claim the amount; the landlord must make the application and be prepared to provide evidence of any damage or loss suffered.

I have no application from the landlords before me, and having found that the tenancy ended on April 30, 2017 and the landlords received the tenants' forwarding address in writing on April 25, 2017, acknowledged by the landlord, I find that the tenants have established the claim for double the amount.

Since the tenants have been successful with the application, the tenants are also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,600.00.

This order is final and binding and may be enforced.

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: July 20, 2017

Residential Tenancy Branch