



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Decision Codes: FF, MNR, MND, MNSD & MNDC

Introduction

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. A monetary order in the sum of \$1700 for double the security deposit.
- b. An order to recover the cost of the filing fee.

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$980 for damages.
- b. An order to keep the security deposit.
- c. 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. The parties acknowledged they had received the documents of the other party.

Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the landlord was served on the Tenants by mailing, by registered mail to where the forwarding address of the Tenants on March 16, 2017. I find that the Application for Dispute Resolution filed by the Tenants was served on the landlord by mailing, by registered mail to the address for service on April 28, 2017.

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenants are entitled to a monetary order and if so how much?
- b. Whether the Tenants are entitled to recover the cost of the filing fee?
- c. Whether the landlords are entitled to a monetary order and if so how much?
- d. Whether the landlords are entitled to retain all or a portion of the security deposit/pet deposit?
- e. Whether the landlords are entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a one year written tenancy agreement that provided that the tenancy would start on September 23, 2013, continue for one year and become month to month after that. The tenancy agreement provided that the tenant(s) would pay rent of \$1700 per month payable in advance on the first day of each month. The tenants paid a security deposit of \$850 on September 25, 2013.

The tenancy ended on July 2, 2017 after the tenant had removed all of his belongings.

The tenants filed an Application for Dispute Resolution seeking the return of double their security deposit in August 2016. The landlord refused to accept the registered mail package. The hearing proceeded on January 31, 2017 in the absence of the landlords. The arbitrator dismissed the Tenants application for double the security deposit with leave to re-apply on the basis that the Tenants failed to provide the landlord with their forwarding address and this claim was premature. The decision further states:

"In recognition that the tenant did provide his forwarding address to the landlord on the Application for Dispute Resolution, *the landlords are put on notice that the landlords are considered to be in receipt of the forwarding address upon receipt of this decision and must now deal with the security deposit pursuant to section 38 of the Act. The tenant's forwarding address is provided on the cover page of this decision for the landlords to use to refund the security deposit or serve the tenants with the Application for Dispute Resolution claiming against the deposit.*

Should the landlords failed to refund the security deposit or file an Application for Dispute Resolution seeking to retain it within 15 days of receiving this decision, the tenant is at liberty to reapply and may seek return of double the security deposit."

The tenant misspelled the names of the landlords in this application. The Decision identifies the last name of the landlord as having the first letter starting with a "P" when in fact the correct spelling of their last name starts with a "F".

The landlord acknowledged that he received this Decision on February 9, 2017.

The landlord filed an Application for Dispute Resolution seeking to retain the security deposit on Monday, February 27, 2017.

Tenants' Application for Dispute Resolution:

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.

Section 38(1) and (6) provides as follows:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days** (my emphasis) after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

...

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The definition section of the Rules of Procedure includes the following for the definition of "days"

a) If the time for doing an act falls or expires on a holiday, the time is extended to the next day that is not a holiday.

b) If the time for doing an act in a business office falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open.

c) In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days, weeks, months or years, the first and last days must be excluded.

d) In the calculation of time not referred to in subsection (c), the first day must be excluded and the last day included.

The landlord submits that insufficient notice of the Tenant's forwarding address has been given to the landlords as the Decision of the arbitrator failed to identify the landlords. Further, the landlords did file an Application with the time frame based on the definition section of the Rules of Procedure which provides as follows:

Analysis

I do not accept the submission of the solicitor for the landlord. The landlords acknowledged receipt of the Decision on February 9, 2017. The Decision identifies the address of the rental property and the name of the Tenants. I do not accept the submission the landlords were misled by the misspelling of the names of the landlords. In fact the landlords filed an Application for Dispute Resolution but it was filed late. I determined the landlords knew or should have known as reasonable parties that the forwarding address of tenants had been provided with instructions as to what they were required to do.

The Act provides that the landlord must return the security deposit or file a claim "within 15 days after ...the landlord receives the tenant's forwarding address in writing." I accept the submission that one does not count the February 9, 2017. However, in my view the Act requires the landlord to file that claim on or before February 24, 2017 (which is a Friday) to comply with the section. I do not accept the submission of the landlord that an additional day is to be added because February 13, 2017 (Family Day) is a holiday. Had the landlord received the Decision on February 10, 2017 the landlord would have had to the Monday to file the claim (February 27, 2017) as the time for doing an act in a business office fell on a day the office was not open and the time would be extended to the next day the office is open..

As a result I determined the tenants paid a security deposit of \$850 on September 23, 2013. I determined the tenancy ended on July 2, 2016. I further determined the landlord was provided with the tenant's forwarding address in writing on February 9, 2017. 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 or the sum of \$1700.

Monetary Order and Cost of Filing fee

I determined the Tenants have established a monetary claim against the landlords in the sum of \$1700 plus \$100 for the cost of the filing fee for a total of \$1800.

Landlords' Application:

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for

reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

After hearing the disputed evidence from the parties I made the following determinations. With respect to each of the landlords' claims I find as follows:

- a. I determined the landlords are entitled to \$480 for the cost of repairs of the following based on 8 hours of work multiplied by \$60 an hour:
 - Inside and outside door trims. Dry wall ripped.
 - Large hole in on bedroom door.
 - Hardwood floor damages
 - Carpet needs to be cleaned.
 - Large pile of dog feces need to be removed
 - Weather stripping on both doors need to be replaced.
 - Weather stripping on door to suite was also torn apart.
 - Lawn damage.
- b. I determined the landlords are entitled to \$400 for the cost of cleaning. The charge of \$25 an hour is reasonable. I am satisfied the totality of the evidence presented by the landlord by the work was necessary and appropriate. The cleaning work included:
 - Cleaning the grout
 - Cleaning the fridge and removal of rotting food.
 - Removal of goods from cupboards and cleaning of the cupboards.
 - Cleaning of light fixtures
 - General house cleaning.
- c. I determined the landlords are entitled to \$20 for the cost of replacing a light bulb (reduced from the \$50 claim which is not reasonable).
- d. I determined the landlords are entitled to \$50 for the cost of taking garbage to the dump.

The tenants disputed most of the landlords' claim but failed to provide sufficient proof.

In summary I determined the landlords have establish a claim against the tenants in the sum of \$950 plus \$100 for the cost of the filing fee for a total of \$1050.

Conclusion:

The tenants have established a claim against the landlords in the sum of \$1800. The landlords have established a claim against the Tenants in the sum of \$1050. After setting off one claim against that of the other I ordered that the Landlords pay to the Tenants the sum of \$750.

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 the parties.

This decision is made on authority delegated to me by the Director of the Residential

Dated: July 26, 2017

Residential Tenancy Branch