



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, RPP, FFT

Introduction

On October 20, 2017, the Tenant submitted an Application for Dispute Resolution for the Landlord to return of all or part of the pet damage deposit or security deposit; to return personal property; and to recover the filing fee for the Application.

The Landlord and Tenant appeared at the hearing. The hearing process was explained and the parties were asked if they had any questions. The parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Tenant entitled to the return of the security deposit?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

The Tenant testified that the tenancy commenced on June 1, 2016, as a 12 month fixed term tenancy. Rent in the amount of \$8,000.00 was due by the first day of each month. The Tenant paid the Landlord a security deposit of \$4,000.00 and a pet damage deposit of \$4,000.00.

The Landlord testified that the Tenant rented additional units later In September 2016, for which the Tenant was to pay an additional \$3,500.00 rent each month and the Tenant paid an additional security deposit of \$1,750.00.

The parties entered into a mutual agreement to end the tenancy at the end of March 2017. The Tenant testified that she moved out of her unit on March 5, 2017. The Tenant testified that she had occupants living in the other units, but they were all moved out by May 31, 2017.

The Tenant testified that the Landlord did not return the security deposit or pet damage deposit after the Tenant moved out of the rental unit. The Tenant testified that there was no agreement that the Landlord could keep any amount or all of the deposits.

The Tenant testified that she provided the Landlord with her forwarding address in writing on April 10, 2017. The Tenant provided a copy of a letter dated April 10, 2017, providing her forwarding address to the Landlord.

The Tenant testified that the Landlord did not make application for dispute resolution to make a claim to keep the deposits within 15 days of the end of the tenancy or within 15 days of receiving her forwarding address.

The Tenant submitted that she wants the Landlord to allow her to retrieve her piano that was left in the unit.

In reply, the Landlord acknowledged that he received the Tenant's forwarding address in writing around the same date submitted by the Tenant. The Landlord confirmed that he did not have an agreement to hold the deposits.

Analysis

Section 38 (1) of the Act states that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must repay any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off states

If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

I find that the Tenant provided her forwarding address in writing to the Landlord on April 10, 2017. There is no evidence before me that the Landlord applied for dispute resolution within 15 days of the Tenant moving out and receiving the Tenant's forwarding address.

Furthermore, the Landlord did not apply for dispute resolution within 15 days after the Tenant's occupants vacated the property on May 31, 2017.

I find that there was no agreement that the Landlord could retain any amount of the security deposit or pet damage deposit.

The Tenant's application only included a claim for the return of the \$4,000.00 security deposit and the \$4,000.00 pet damage deposit that was paid towards the tenancy that commenced June 1, 2016.

I find that the Landlord breached section 38 of the Act. Pursuant to section 38(6) of the Act, the Landlord must pay the Tenant double the amount of the security deposit and pet damage deposit.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Tenant's application is successful, I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

I order the Landlords to pay the Tenant the amount of \$16,100.00. I grant the Tenant a monetary order in the amount of \$16,100.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

The Landlord agreed to permit access to the Tenant to remove her piano and cautioned the Tenant that any damage caused by the removal will be the responsibility of the Tenant.

Conclusion

The Landlord failed to return the security deposit and pet damage deposit to the Tenant in accordance with the legislation.

The Tenant is granted double the amount of the security deposit and pet damage deposit. I grant the Tenant a monetary order in the amount of \$16,100.00.

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: January 17, 2018

Residential Tenancy Branch