



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for damages pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord did not attend this hearing, although I waited until 1:44 p.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 1:30 p.m. The tenant attended the hearing and was given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

Issues

Are the tenants entitled to a return of all or a portion of the security and pet deposit, including double the amount?

Background and Evidence

The tenancy ended on June 15, 2017. The tenants paid a security deposit of \$1000.00 plus a pet deposit of \$1000.00 at the start of the tenancy. The tenants testified that they had an agreement with the landlord to a deduction of \$300.00 from the security deposit. The balance was to be returned by e-transfer to the tenants. On July 13, 2017 the landlord returned \$1255.00 but retained the balance of \$745.00. The tenants provided a forwarding address to the landlord in writing on July 14, 2017. The landlord filed this application on July 27, 2017.

Analysis

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has, at the end of the tenancy, consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. A landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit, pet deposit, or both, as applicable.

I find the tenants did provide a forwarding address in writing to the landlord. The landlord's application was filed within 15 days of receiving the forwarding address.

However, the landlord failed to follow through on that application by attending the hearing or submitting any evidence in support of the application. As such, the landlord's application is dismissed in its entirety without leave to reapply.

I find the landlord's application to be frivolous and an abuse of the dispute resolution process. As per Residential Tenancy Policy Guideline #17, the doubling provisions of section 38 therefore apply.

The tenants are entitled to return of the security and pet deposit including double the amount. The tenants are awarded an amount of \$3,400.00, which is double the original security and pet deposit of \$2000.00 less the \$300.00 agreed upon deduction $(\$2000.00 - 300.00) \times 2$. The amount of \$1255.00 security and pet deposit already returned by the landlord is deducted from this award for a net award of **\$2145.00**.

Conclusion

The landlord's application is dismissed without leave to reapply.

Pursuant to section 67 of the *Act*, I grant the tenants a Monetary Order in the amount of \$2145.00. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 30, 2018

Residential Tenancy Branch