



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

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

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package and the tenant's documentary evidence. No documentary evidence was filed by the landlord. Neither party raised any service issues. I accept the undisputed affirmed testimony of the both parties and find that both parties have been sufficiently served and are deemed served as per section 90 of the Act.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for return for all or part of the security deposit and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on February 15, 2017 on a fixed term tenancy until February 15, 2018 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated January 29, 2017. The monthly rent was \$1,700.00 payable on the 1st day of

each month. A security deposit of \$850.00 and a pet damage deposit of \$850.00 were paid. Both parties confirmed that the tenancy ended on December 31, 2017.

The tenants seek a monetary claim of \$1,192.00 which consists of:

| | |
|------------|----------------------------------------------|
| \$1,700.00 | Return of combined Security and Pet Deposits |
|------------|----------------------------------------------|

The tenants' claims that the tenancy ended on December 31, 2017 and the landlord was provided with the forwarding address via text message on January 15, 2018. As of the date of this hearing the landlord has not returned the \$850.00 security and the \$850.00 pet damage deposits. The landlord confirmed the end of tenancy date and that the tenant's forwarding address in writing was received as claimed by the tenant.

During the hearing the tenant agreed to a deduction of \$508.00 to be withheld from the combined security and pet damage deposit as outlined in the tenants' application for return of the remaining \$1,192.00 after the deduction of the agreed upon \$508.00.

Both parties confirmed during the hearing that the landlord was not given permission by the tenants or the Residential Tenancy Branch to withhold the combined security and pet damage deposits.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the *Act* equivalent to the value of the security/pet damage deposits.

In this case, I accept the undisputed affirmed evidence of both parties and find that the tenants have established a claim for return of the combined \$1,700.00 security and pet damage deposits minus the \$508.00 agreed upon to be withheld by the landlord for a total of \$1,192.00.

However, section 38 (6) of the Act states that the landlord is required to pay to the tenant a monetary award equal to the value of the security and/or pet damage deposits if the landlord failed to comply with section 38(1) by failing to return the deposits within the 15 day period or file an application in dispute of its return. As such, I find that the landlord failed to do either and is subject to section 38(6) and is entitled a monetary award equal to the combined amount of \$1,700.00.

The tenants are entitled to a monetary claim of \$2,892.00 (\$1,192.00+\$1,700.00).

The tenants having been successful are also entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenants are granted a monetary order for \$2,992.00.

This order must be served upon the landlord. Should the landlord fail to comply with the 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 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: October 2, 2018

Residential Tenancy Branch