



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

On June 21, 2018, the Landlords applied for a Dispute Resolution proceeding seeking a Monetary Order for cleaning and damage pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit and pet damage deposit towards these debts pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlords attended the hearing; however, the Tenants did not attend the hearing. The Landlords provided a solemn affirmation.

The Landlords advised that they served each Tenant a Notice of Hearing package by registered mail on June 21, 2018 (the registered mail tracking numbers are on the first page of this decision) and these packages were signed for. In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Tenants were served the Landlords’ Notice of Hearing packages.

The Landlords were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Landlords entitled to a Monetary Order for cleaning and damage?

- Are the Landlords entitled to apply the security deposit and pet damage deposit towards these debts?
- Are the Landlords entitled to recover the filing fee?

Background and Evidence

The Landlords stated that the tenancy started on July 4, 2017 and that the Tenants vacated the rental unit on May 31, 2018. Rent was established at \$1,000.00 per month, due on the first day of each month. A security deposit of \$500.00 and a pet damage deposit of \$500.00 were also paid.

The Landlords advised that a move-in inspection report was conducted with the Tenants but as the Tenants moved out quickly, a move-out inspection report was not conducted. They submitted that they did not provide the Tenants with two opportunities to conduct the move-out inspection report. No inspection reports were submitted into evidence for this particular tenancy. They stated that a forwarding address was provided via text on June 15, 2018.

They submitted that the Tenants verbally agreed that the cost of cleaning and carpet cleaning would be deducted out of the security deposit. On June 16, 2018, the Landlords attempted to electronically transfer \$196.25 to the Tenants as the balance of the security deposit; however, the Tenants refused this transfer. As well, they stated that damage to the couch was caused by the pet and that it would cost over \$1000.00 to repair. The Landlords were seeking to apply the pet damage deposit to the cost of re-upholstering the couch.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 36(2) of the *Act* states that the right of the Landlords to claim against a security deposit is extinguished if the Landlords do not provide the Tenants with two opportunities to attend the move-out condition inspection. As the undisputed evidence is

that the Landlords did not do so pursuant to the *Act*, I find that the Landlords have extinguished their right to claim against the security deposit and pet damage deposit.

Section 38(1) of the *Act* requires the Landlords, within 15 days of the end of the tenancy or the date on which the Landlords receive the Tenants' forwarding address in writing, to either return the deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposits. If the Landlords fail to comply with Section 38(1), then the Landlords may not make a claim against the deposits, and the Landlord must pay double the deposits to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the undisputed evidence before me, I am satisfied that the Landlords had the Tenants' forwarding address on June 15, 2018. As the tenancy ended on May 31, 2018, I find that June 15, 2018 is the date which initiated the 15-day time limit for the Landlords to deal with the deposits. However, the undisputed evidence before me is that the Landlords extinguished their right to claim against the deposits. There is no provision in the *Act* which allows the Landlords to retain a portion of the deposit without authority under the *Act* or having the Tenants' written consent.

As the Landlords extinguished their rights to claim against the security deposit and pet damage deposits and they did not return them in full within 15 days of June 15, 2018, in essence illegally withholding the deposits contrary to the *Act*, I am satisfied that the Landlords breached the requirements of Section 38. As such, I find that the Tenants have established a claim for a monetary award amounting to double the original security and pet damage deposits. Under these provisions, I grant the Tenants a monetary award in the amount of \$2,000.00; however, as the Landlords attempted to pay the Tenants the amount of \$196.25 within 15 days, I am reducing this monetary award accordingly. As such, I grant the Tenants a monetary award in the amount of **\$1,803.75**.

With respect to the Landlords' claims for cleaning and damage, due to the lack of inspection reports and evidence substantiating that the Tenants were responsible for these issues, I dismiss the Landlords' claims in their entirety.

As the Landlords were unsuccessful in their claims, I find that the Landlords are not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The Tenants are provided with a Monetary Order in the amount of **\$1,803.75** in the above terms, and the Landlords must be served with **this Order** as soon as possible. Should the Landlords 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: October 12, 2018

Residential Tenancy Branch