



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This teleconference hearing was scheduled in response to an application by the Tenants under the *Residential Tenancy Act* (the “*Act*”) for the return of the security deposit and pet damage deposit.

One of the Tenants and one of the Landlords were present for the duration of the teleconference hearing. The parties confirmed that the Notice of Dispute Resolution Proceeding package and copies of each party’s evidence was served as required. The Tenant stated that she received the Landlord’s evidence package only a few days prior to the hearing, but clarified that it was sent to the address of a family member as that was the address that was provided to the Landlord. She was not sure when it was delivered to her family member. As such, I find that the Notice of Dispute Resolution and evidence was duly served in accordance with Sections 88 and 89 of the *Act*.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch 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

Are the Tenants entitled to the return of their security deposit and pet damage deposit?

Should the Tenants be awarded the return of double their security deposit and pet damage deposit?

Background and Evidence

The parties provided the following details of the tenancy: the tenancy began on December 31, 2017, although the Landlord stated the Tenants may have moved in on December 29, 2017. Monthly rent was \$1,200 and a security deposit and pet damage deposit of \$600.00 each was paid at the outset of the tenancy. The Landlord confirmed that they are still in possession of the security deposit and pet damage deposit. The Tenants moved out on February 28, 2018.

The Tenant stated that she asked for the deposits back after moving out and the Landlord told her she would be in touch in March 2018. The Tenant testified that she did not hear further from the Landlord, despite numerous attempts to contact her regarding the return of the security deposit and pet damage deposit.

During the hearing the Tenant agreed that they owed \$291.39 for the electricity bill. The Tenant stated that they did not agree to any other deductions from their deposits. The Landlord submitted into evidence an email dated February 26, 2018 in which the Tenant agreed that the Landlord could withhold the electricity bill amount from the security deposit.

The Tenant stated that they did not do a Condition Inspection Report upon moving out as the Landlord was not available until March 10, 2018 when the Tenants were already in another city. The Tenant also stated that she was not aware of the Landlord's claim about damage in the rental unit until receiving the evidence for the hearing.

The Tenant stated that their forwarding address was provided to the Landlord on February 28, 2018, which was confirmed by the Landlord.

The Landlord stated that she kept the deposits due to damage in the rental unit. She submitted many photos and provided testimony regarding junk removal, carpet replacement due to dog urine stains, painting, and hauling items out of the home. The

Landlord testified as to significant damage in the rental unit and many items of garbage and junk left behind.

The Landlord confirmed that they did not file an Application for Dispute Resolution. She also stated that the Tenants provided two days notice to move, which did not provide her enough notice to travel to the city where the rental unit is located to complete the move-out inspection right away.

The Tenant stated that they had received a Two Month Notice for Landlord's Use of Property, so the Landlord should have been aware that they were moving. She also stated that she is not in agreement with any of the Landlord's statements regarding damage, as they did not cause damage to the rental unit.

Analysis

I refer to Section 38(1) of the *Act* which states the following:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days 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.

I accept the testimony of both parties that the security deposit and pet damage deposits have not been returned. I also accept the testimony of the Landlord that they did not file an Application for Dispute Resolution.

As confirmed by both parties, I find that the tenancy ended on February 28, 2018 and the Tenants' forwarding address was provided the same day. As such, I determine that the Landlords had 15 days from February 28, 2018 to return the deposits or file a claim against them. As the Landlords took neither of these steps, I find that they were not in compliance with Section 38(1).

When a landlord does not comply with Section 38(1) of the *Act*, Section 38(6) applies, and the Tenants are entitled to a return of double their deposits in an amount of \$2,400.00.

However, as the Tenants agreed that they owed the electricity bill in the amount of \$291.39, as stated in an email dated February 26, 2018 and as confirmed during the hearing, I find that the Landlords had the right to withhold this amount, pursuant to Section 38(4)(a) of the *Act*. Therefore, I find that the Tenants are entitled to a Monetary Order in the amount outlined below.

Return of security deposit minus amount agreed upon	\$308.61
Amount to double security deposit	\$308.61
Return of pet damage deposit	\$600.00
Amount to double pet damage deposit	\$600.00
Total owing to Tenants	\$1,817.22

Conclusion

Pursuant to Sections 38 and 67 of the *Act*, I grant the Tenants a **Monetary Order** in the amount of **\$1,817.22** for the return of double the security deposit after deductions for utilities agreed upon, and double the pet damage deposit. The Tenants are provided with this Order 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 22, 2018

Residential Tenancy Branch