



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes: MNDS, FF

Introduction

The Application for Dispute Resolution filed by the Tenant(s) seeks the following:

- a. A monetary order in the sum of \$2500 the security deposit and pet damage deposit. .
- b. An order to recover the cost of the filing fee.

The original hearing was held on August 7, 2018. SL did not attend. At that hearing I ordered that the landlord SL pay to the Tenant(s) the sum of \$4300 after deducting a \$400 cleaning charge as agreed by the Tenant(s) and then doubling the remaining deposit held by the landlord. The claim against SW WAS dismissed.

The landlord SL applied for review of that decision on the basis that he had not been sufficiently served. The arbitrator granted his application and a review hearing was ordered.

The Tenants NJ and CJ objected to the hearing on the basis that the landlord SL failed to serve them. They did not seek an adjournment. I determined it was appropriate to continue with the hearing at this stage.

A review hearing was held in the presence of both landlords and the tenants MJ and CJ. NJ did not attend although the other tenants advised he was aware of the hearing. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenants are entitled to the return of the security deposit/pet deposit?
- b. Whether the tenants are entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy started on September 5, 2017. The rent was \$3500 plus utilities per month. The tenants paid a security deposit of \$1750 and a pet damage deposit of \$750 for a total of \$2500 at the start of the tenancy.

The two landlords were going through a divorce proceeding. SW submits that the monetary order should not be made against her as she was not allowed on the property at the end of the tenancy and the security deposit and pet deposit monies were taken by SL. The tenants agreed that a monetary order should not be made against SW.

The parties produced letter from the solicitor for SL dated late January agreeing that SL would pay the deposit monies to the tenants once they vacated. There is also a text message from SL around the middle of March where he agrees the rental unit was left in a satisfactory condition and he would return the security deposit less a Fortis Bill.

The landlord SL agreed the monetary order ought not to be made against the landlord SW.

The tenancy ended on March 6, 2018. The tenant MJ testified she provided the landlord with her forwarding address in writing a few days later. The landlord denied receiving it. However, he did acknowledge receiving the forwarding address of the tenant CJ on or about April 13, 2018.

Law

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

Analysis

I dismissed the claim against SW as I determined SW no longer holds the deposit, the tenants agreed that the claim against SW should be dismissed and the landlord SL also agreed not monetary order should be made against SW..

The tenants paid a security deposit of \$1750 and pet damage deposit of \$750 in September 2017 for a total of \$2500. I determined the tenancy ended on March 6, 2018. I further determined the tenants provided the landlord with their forwarding address in writing on April 13, 2018.

In the previous decision the tenants testified they agreed the landlord could deduct \$400 for cleaning and the hydro bill. As a result I deducted this sum leaving a balance of \$2100 and then doubled that amount in the monetary order. The landlord testified his actual cleaning cost was \$600 and he intends to claim this amount. The parties were unable to provide any agreement in writing to record this agreement. As a result I determined there was no written agreement that the landlord could retain a portion of the security deposit.

The landlord does not have a monetary order against the tenants and the landlord failed to file an Application for Dispute Resolution within the 15 days from the later of the end of tenancy or the date the landlord receives the tenants' forwarding address in writing. The Policy Guidelines provide that the Tenant is entitled the doubling of the deposit(s) even if the that claim is not specifically set out in the Application for Dispute Resolution unless the tenants waive the doubling. The tenants stated they wished to have the deposit(s) be doubled. As a result I determined the tenants have established a claim against the landlord SL for double the security deposit or the sum of \$5000 ($\$2500 \times 2 = \5000).

The landlord retains the right to file an Application for Dispute Resolution with the Residential Tenancy Branch seeking a monetary order for whatever claims he believes that he is entitled to and that will be adjudicated at some time in the future.

Monetary Order and Cost of Filing fee

As a result of the decision I ordered that the monetary order from the previous hearing dated August 7, 2018 be varied and replaced by the following. I ordered the landlord(s) SL pay to the tenants the sum of \$5000 plus the sum of \$100 in respect of the filing fee for a total of \$5100.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this 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 final and binding on both parties.

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 26, 2018

Residential Tenancy Branch