



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KIDD HOLDINGS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FFT

Introduction

On March 16, 2018, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for the Landlord to return of all or part of the pet damage deposit or security deposit, and to recover the cost of the filing fee for the Application.

The Tenants and Landlord appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. All participants in the hearing provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the 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 the security deposit?
- Are the Tenants entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy commenced on August 1, 2017, on a month to month basis, and ended on January 31, 2018. Rent in the amount of \$1,050.00 was due by the first day of each month. The parties testified that the Tenants paid the Landlord a security deposit of \$525.00 and a pet damage deposit of \$250.00.

The Tenant testified that the Landlords did not return the entire security deposit and/or pet damage deposit after the Tenants moved out of the rental unit.

The Tenants testified that on February 15, 2018, the Landlord returned the amount of \$309.03 to them by cheque. The Tenants testified that they have not cashed the cheque.

The Tenant testified that there was no written agreement that the Landlord could retain any amount of the security deposit or pet damage deposit.

The Tenants testified that on February 27, 2018, they provided the Landlord with their forwarding address in writing.

In reply, the Landlord testified that he received the Tenants' forwarding address in writing on February 27, 2018. The Landlord acknowledged that he sent the Tenants the amount of \$309.03. The Landlord testified that he believed that the condition inspection report containing the Tenants signature gave him authority to retain any amount of the deposit for his costs to clean and repair damage.

The Landlord did not apply for dispute resolution to file a claim against the deposits.

The Tenants testified that they are seeking the return of double the amount of the deposits because the Landlord failed to return the deposits and did not have permission to keep any amount.

Analysis

Section 38 (1) of the Act states that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must repay any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off states

If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

I find that the Landlord received the Tenants forwarding address on February 27, 2018.

I find that the Landlord failed to apply for dispute resolution within 15 days of receiving the Tenants' forwarding address. I find that there was no written agreement between the parties that permitted the Landlord to retain an amount of the security deposit or pet damage deposit. A signature on a condition inspection report indicating that a Tenant agrees that the report fairly represents the condition of the unit is not an agreement between the parties that the landlord may retain an amount to pay a liability or obligation of the Tenant.

I find that the Landlord breached section 38 of the Act. Pursuant to section 38(6) of the Act, the Landlord must pay the Tenants double the amount of the security deposit and pet damage deposit.

I order the Landlord to pay the Tenants the amount of \$1,550.00. I order the Tenants to destroy the cheque they received in February 2018, for the amount of \$309.03.

I grant the Tenants a monetary order in the amount of \$1,550.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlords are cautioned that costs of such enforcement are recoverable from the Landlord.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenant's paid to make application for dispute resolution.

Conclusion

The Landlord failed to return the security deposit and pet damage deposit to the Tenants in accordance with the legislation.

The Tenants are granted double the amount of the security deposit and pet damage deposit. I grant the Tenants a monetary order in the amount of \$1,550.00.

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 11, 2018

Residential Tenancy Branch