



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenants under the *Residential Tenancy Act* (the “Act”) for monetary compensation, for the return of the security deposit and pet damage deposit and for the recovery of the filing fee paid for this application.

Both Tenants and the Landlord were present for the duration of the teleconference hearing. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence. The Tenants confirmed receipt of the Landlord’s evidence package, but stated it was received on December 31, 2018, four days prior to the hearing.

As stated in rule 3.15 of the *Residential Tenancy Branch Rules of Procedure*, the respondent’s evidence package must be received by the Residential Tenancy Branch and the applicants not less than seven days prior to the hearing. However, as the Landlord’s evidence was mostly photos and both Tenants confirmed they had a chance to review the Landlord’s evidence prior to the hearing, the evidence was accepted and will be considered as part of this decision.

All 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.
parties

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.

Preliminary Matters

In addition to the return of the security deposit and pet damage deposit, the Tenants applied for monetary compensation in the amount of \$200.00. They provided testimony that \$100.00 was for a previous dispute resolution proceeding in which the application was dismissed and recovery of the filing fee not awarded. The remaining \$100.00 was for the filing fee for this application. It was explained to the parties that a decision was already made on the previous application and therefore I am not able to award the recovery of a filing fee regarding a previous decision.

As the parties also filed a claim for the return of their \$100.00 filing fee paid for this application, this will be considered as part of this decision. Therefore, pursuant to Section 64(3)(c) of the *Act*, the Application for Dispute Resolution was amended to remove the Tenants' claim for monetary compensation.

Issues to be Decided

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

Should the Tenants be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began on November 1, 2017 and ended on May 31, 2018. Monthly rent was \$1,350.00. A security deposit of \$675.00 and a pet damage deposit of \$400.00 were paid at the outset of the tenancy.

The parties both provided testimony regarding the tenancy, including the ways in which their relationship deteriorated throughout the tenancy. However, while all testimony and evidence was considered, only the testimony and evidence relevant to the Tenants' claims will be included in this decision.

The Tenants testified that they provided their forwarding address to the Landlord through a letter dated June 1, 2018. This letter was submitted into evidence. The Tenants signed the letter on June 2, 2018 and stated that it was likely on or around

June 2, 2018 that the letter was placed in the Landlord's mailbox, although they were unsure of the exact date.

The Tenants stated that on June 29, 2018 they received a letter in the mail from the Landlord along with a cheque for the return of \$703.42 of their deposits. The letter from the Landlord was submitted into evidence and although dated June 16, 2018, the Tenants submitted that they did not receive it until June 29, 2018.

The letter stated that the Landlord withheld an amount of \$371.58 for replacement of a closet door, replacement of 2 blinds, replacement of an outdoor light fixture and the cost of repairing the lawn.

The Tenants testified that they did not agree to any deductions from their deposits and therefore did not accept the cheque from the Landlord. They stated that they mailed the cheque back to the Landlord along with a letter. The letter, dated July 9, 2018 was submitted into evidence and states that the Tenants do not accept the cheque from the Landlord as they are not in agreement with the damages claimed or the amounts charged.

The Tenants provided further testimony that one of them attended a move-out inspection on May 31, 2018. However, they stated that this involved a walk-through of the rental unit and that there was nothing in writing. They stated that during the inspection the Landlord discussed areas of the rental unit where he felt there was damage that required repairs, but that no monetary amount was confirmed either verbally or in writing. They stated that they did not sign anything agreeing that the Landlord could withhold an amount from their deposits.

The Landlord was in agreement that a walk-through of the rental unit was conducted on May 31, 2018 with one of the Tenants. The Landlord stated that after the walk-through, the other Tenant was waiting in the car and as both Tenants began yelling he called the police. The Landlord stated that no specific monetary amounts for damages were discussed at the inspection and that nothing was put into writing.

He stated that he pointed out the areas of damage to the Tenant and discussed what would need to be done to repair these areas. The Landlord submitted photos into evidence of the lawn, blinds, closet doors and an outdoor light fixture. The Landlord stated that these were the areas where there was damage for which the Tenants are responsible.

The Landlord stated that there was no move-in inspection completed. However, he submitted photos of the lawn and blinds prior to the Tenants moving in. The Landlord also submitted into evidence a text message from the Tenants on May 31, 2018 stating that they are prepared to fix the closet doors, seed the lawn and replace the blinds. In the text message the Tenants ask for measurements of the door and blinds and more information about the kind of seed needed for the lawn. The Landlord stated that he had the repairs completed himself and submitted a receipt for grass seed and a receipt from a hardware store.

The Landlord stated that he does not remember when the Tenants' forwarding address was provided to him, although he did receive it. He submitted that he mailed them a letter and a cheque for \$703.42. While the letter was dated June 16, 2018, the Landlord was unsure what day it was mailed to the Tenants.

The Tenants stated that they had offered to seed the lawn, fix the blinds and fix the closet doors despite the closet door being damaged when they moved in. However, they stated that they did not agree to any amount being withheld by the Landlord or to the amounts he spent on repairs and did not hear further from the Landlord regarding what these amounts would be prior to receiving his letter. As such, the Tenants stated that they applied for the return of their full security and pet damage deposits. During the hearing, the Tenants did not agree to pay for any repairs or damages.

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.

The parties were in agreement that the tenancy ended on May 31, 2018. Although there is evidence that the Tenants provided their forwarding address to the Landlord through a letter signed June 2, 2018, the Tenants were unsure of when this was sent, and the Landlord was unsure when this letter was received.

As the Tenants received a letter from the Landlord with a partial return of their deposits on June 29, 2018, I find that the forwarding address was provided to the Landlord prior to this date.

The Landlord testified that he did not apply for dispute resolution and the full amount of the deposits have not been returned. The parties were in agreement that a cheque in the amount of \$703.42 was not accepted by the Tenants. Therefore, the Landlord is still in possession of the full deposit amounts.

Although the Landlord attempted to return an amount of \$703.42 therefore withholding an amount of \$371.58, I do not find that the Landlord had permission under the *Act* to withhold any amount from the deposits. Despite the Landlord's testimony and evidence regarding damage caused during the tenancy, I find that the Landlord did not have permission to withhold any amount from either deposit.

Section 38(4)(a) states that a landlord may withhold an amount that the tenant has agreed to in writing. Both parties agreed that although damages were discussed at the end of the tenancy, the Tenants did not agree to any amount being withheld from their deposits and that nothing was put into writing. A security deposit and pet damage deposit are to be held in trust by a landlord and a landlord may only retain these deposits if they have the right to do so under the *Act*.

Section 38(6) of the *Act* states the following:

- (6) If a landlord does not comply with subsection (1), the landlord
 - (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

As the Landlord did not return the full deposits or file an Application for Dispute Resolution within 15 days of receiving the Tenants' forwarding address, I find that he

was not in compliance with Section 38(1) and therefore Section 38(6) applies. The Tenants are entitled to the return of double their security deposit and double their pet damage deposit.

As the Tenants were successful in their application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00.

The Tenants are granted a Monetary Order in the amount outlined below.

Return of pet damage deposit	\$400.00
Amount to double pet damage deposit	\$400.00
Return of security deposit	\$675.00
Amount to double security deposit	\$675.00
Recovery of filing fee	\$100.00
Total owing to Tenants	\$2,250.00

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a **Monetary Order** in the amount of **\$2,250.00** for the return of double the pet damage deposit and security deposit and for the recovery of the filing fee paid for the Application for Dispute Resolution. The Tenants are provided with this Order in the above terms and the Landlord must be served with **this Order** as soon as possible. Should the Landlord 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: January 09, 2019

Residential Tenancy Branch