



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for damages for the landlord – security deposit(s) applied to the claim; and
- filing fee repaid to the landlords.

The landlords did not attend this teleconference hearing. Tenant C.S attended the hearing for both tenants. I left the teleconference hearing connection open until 1:40 p.m. in order to enable the landlords to call into this teleconference hearing scheduled for 1:30 p.m. I confirmed that the correct call-in numbers and participant codes were provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference. The landlords clearly would have been aware of the date and time for this proceeding, as this was their application.

Issue(s) to be Decided

Are the landlords entitled to:

- a monetary award for damages – security deposit and pet damage deposit applied to the claim pursuant to section 67 of the Act; and
- claim for the filing fee from the tenants under section 72 of the Act?

Background and Evidence

A copy of the tenancy agreement was submitted into evidence. The tenant testified that the tenancy started in October 2017 and ended in August 2018. The tenant paid a

Security Deposit in the amount of \$650.00 and a Pet Damage Deposit (the security and pet damage deposit) also in the amount of \$650.00. On September 1, 2018 the tenants participated in a condition inspection report and refused to sign the report, as they were not in agreement with the landlords' remarks. The tenant testified that the landlords received the tenants' forwarding address at the end of the tenancy and as evidenced by the fact that the tenant received the landlords' notice of the dispute resolution proceeding dated September 18, 2018, at their new address.

The tenant provided uncontradicted testimony that the landlords received the tenants forwarding address on September 1, 2018, on the day they conducted the condition inspection report at the end of the tenancy. The landlords continue to hold the security and pet damage deposit. The tenants did not agree with the condition inspection report nor did they give permission to the landlords to hold the security and pet damage deposit.

Analysis

Residential Tenancy Branch Rules of Procedure 7.1, 7.3 and 7.4 provide as follows:

Commencement of Hearing:

The hearing must commence at the scheduled time unless otherwise decided by the arbitrator.

Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

The *Act* has extensive provisions for landlords and tenants to follow when entering and ending a landlord/tenant relationship. Section 38 of the *Act* states:

Return of security deposit and pet damage deposit

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.

(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.

In accordance to section 38(6) of the Act, the landlords had until September 16, 2018 to claim against the security and pet damage deposit. The landlords filed for dispute resolution on September 18, 2018, two days after the required statutory period.

In accordance with section 38(6) of the Act and Policy Guidelines 17 section:

“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.**”

[Emphasis Added]

The tenant provided undisputed testimony. The applicants for this dispute resolution hearing were not in attendance to present evidence and provide affirmed testimony on the merits of their case; consequently, I dismiss the landlords’ application without leave to re-apply and order the landlords to pay the tenants double the security deposit.

Amount awarded to the tenants		
Security Deposit	(\$650.00 x 2)	\$1,300.00
Pet Damage Deposit	(\$650.00 x 2)	\$1,300.00
Total		\$2,600.00

As the landlords are not successful in this application, they must bear the cost of their own filing fee.

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 of the Act and I grant a monetary order in the amount of **\$2,600.00** comprised of double the amount of the security and pet damage deposit.

This order must be served on the landlords. If the landlords fail to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be 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: February 08, 2019

Residential Tenancy Branch