



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This is an application by the tenant(s) filed under the Residential Tenancy Act (the “Act”) for a monetary order for return of double the security deposit (the “Deposit”), and the pet damage deposit (the “Deposits”) and the filing fee for the claim.

Both parties appeared, gave 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 at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

Is the tenant entitled to a monetary order for return of the Deposit?

Background and Evidence

The parties agreed that tenancy began on March 2016. Rent in the amount of \$750.00 was payable on the first of each month. A security deposit of \$375.00 was paid by the tenant. The tenancy ended August 31, 2018.

The parties agreed that the landlords received the tenant's forward address prior to the tenancy ending.

The tenant testified that they agreed the landlords could retain the amount of \$50.00 from the security deposit for carpet cleaning. The tenant stated that the landlords have not returned the balance of the Deposit.

The landlords acknowledged that they did not return the tenant's Deposit or making an application claiming against the Deposit.

Analysis

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

Return of security deposit and pet damage deposit is defined in Part 2 of the Act.

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.

...

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(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.

I accept the evidence of both parties that the landlords had the tenant's forwarding address prior to tenancy ending. I find the landlords had 15 days from when the tenancy ended to return the Deposit or make an application claiming against the Deposit as required by section 38(1) of the Act. The landlords did not return the Deposit or make an application as required. I find the landlord has breached 38(1) of the Act.

The security deposit is held in trust for the tenant by the landlords. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator. Here the landlords only had the authority to retain the amount of \$50.00 as per the agreement.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the Deposit. The legislation does not provide any flexibility on this issue.

Therefore, I must order, pursuant to section 38 of the Act that the landlords pay the tenant the sum of **\$800.00**, comprised of double the Deposit \$750.00 on the original amount held of \$375.00, the amount of \$100.00 to recover the fee for filing this Application and reduced by the amount of \$50.00 as agreed upon.

The tenant is given a formal monetary order pursuant to 67 of the Act, in the above terms and the landlord must be served with a copy of this order as soon as possible. Should the landlord 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.

Conclusion

The tenant's application for return of the Deposit is granted. The tenant is granted a monetary order in the above noted amount.

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: April 04, 2019

Residential Tenancy Branch