



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

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

The Landlord was present for the teleconference hearing and one of the Tenants joined the hearing approximately 6 minutes after it started. The parties were affirmed to be truthful in their testimony. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenants’ evidence. The Landlord did not submit any evidence prior to the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch 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 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 which were confirmed by the tenancy agreement submitted into evidence. The tenancy started on August 15, 2017. Rent in the amount of \$1,700.00 was due on the last day of each month. A security deposit of \$850.00 and a pet damage deposit of \$850.00 was paid at the start of the tenancy. The tenancy ended on March 15, 2019.

The Tenants have applied for compensation in the amount of \$1,500.00. The Tenant stated that this is double the security deposit minus the amount already returned, \$100.00 from the security deposit that was not returned and \$100.00 for the filing fee paid for the application.

The parties were in agreement that the Tenants' forwarding address was provided on the Condition Inspection Report at move-out which was conducted on March 13, 2019. A copy of the move-in and move-out reports were submitted into evidence. On the move-out report, the Tenant signed but did not agree to any deductions from the deposits.

The Landlord testified that the move-out inspection was conducted while the Tenants were in the process of moving out. As such, he stated that they discussed further cleaning that needed to be completed and remaining items to be removed from the rental unit. However, the Landlord stated that this was a verbal conversation only and not noted on the move-out inspection. The Landlord confirmed that the Tenants did not agree in writing to any deductions from their deposits.

The Landlord stated that he retained \$100.00 from the security deposit and returned \$750.00 on March 26, 2019. He also stated that \$450.00 was retained from the pet damage deposit with \$400.00 returned on April 16, 2019.

The Landlord testified as to the reasons that an amount from both deposits was retained including moving items left behind out of the rental unit, yard work, and repair of a screen door. The Landlord confirmed that he did not file an Application for Dispute Resolution to retain an amount from either deposit.

The Tenant agreed that the Landlord returned \$750.00 from the security deposit on March 26, 2019 and \$400.00 of the pet damage deposit on April 16, 2019. She submitted copies of the electronic funds transfer information.

The Tenant stated that they did not agree in writing to any deductions from either deposit. She stated that there were conversations with the Landlord about filling a hole in the backyard that may have been caused by the Tenants' pet, but no amount was agreed upon and nothing was agreed to in writing.

Analysis

Based on the testimony of both parties and the evidence of the Landlord, I find as follows:

I refer to Section 38(1) of the *Act* which states that a landlord has 15 days from the later of the date the tenancy ends or the date the forwarding address is provided in writing to return the deposits or file a claim against them.

I accept the testimony of the Landlord that he did not file an Application for Dispute Resolution. I also accept the testimony of both parties that the tenancy ended on March 15, 2019 and the Tenants' forwarding address was provided on March 13, 2019. Therefore, I find that the Landlord had 15 days from March 15, 2019 to return the deposits.

As stated in Section 38(4) a landlord may retain an amount from the deposits that the tenant agrees to in writing. However, both parties agreed that the Tenants did not provide permission in writing for the Landlord to retain any amount. Despite verbal conversations, I do not find that the Tenants provided permission in accordance with the *Act*. I also do not find that the Landlord had authorization under any part of Section 38 to retain an amount from the deposits.

The Landlord returned \$750.00 of the security deposit on March 26, 2019, which was within the 15 days allowable. However, I find that he retained \$100.00 without permission or authorization under the *Act* to do so and therefore was not in compliance with Section 38(1).

The Landlord returned \$400.00 of the pet damage deposit on April 16, 2019 which was outside of the 15 days allowable, which was therefore also not in compliance with Section 38(1) of the *Act*.

As I have found that the Landlord was not in compliance with Section 38(1) of the *Act*, I find that Section 38(6) applies as follows:

- (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 such, in accordance with *Residential Tenancy Branch Policy Guideline 17* and Section 38(6) of the *Act*, I find that the Landlord owes the Tenants double the security deposit and double the pet damage deposit. Despite returning part of the security deposit within 15 days, the Landlord retained an amount without the right to do so and therefore was not in compliance with Section 38(1) of the *Act* as the full deposit owed was not returned. Although the Tenants applied for the return of the remaining \$100.00 from the security deposit, as stated I find that they are entitled to double the deposit.

A security deposit and pet damage deposit are held in trust by the landlord for the tenant and may not be retained simply because the landlord believes they are entitled to do so. The amounts already returned will be deducted from the total amount owed to the Tenants.

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

The Tenants are awarded a Monetary Order in the amount outlined below:

Return of security deposit	\$850.00
Amount to double security deposit	\$850.00
Return of pet damage deposit	\$850.00
Amount to double pet damage deposit	\$850.00
Recovery of filing fee	\$100.00
<i>Less amount of security deposit already returned</i>	<i>(\$750.00)</i>
<i>Less amount of pet damage deposit already returned</i>	<i>(\$400.00)</i>
Total owing to Tenants	\$2,350.00

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a **Monetary Order** in the amount of **\$2,350.00** as outlined above. 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: August 09, 2019

Residential Tenancy Branch