



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/or pet damage deposit, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

Both Tenants and both Landlords were present for the hearing. The Tenants had a witness they wanted to join the hearing, but the witness was unavailable when contacted by the Tenants during the hearing.

The Landlords confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenants’ evidence. The Tenants confirmed receipt of a copy of the Landlords’ evidence. Neither party brought up any issues regarding service during the hearing.

The 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.

Issues to be Decided

Are the Tenants entitled to monetary compensation?

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

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were not in agreement as to all of the tenancy details. The Tenants testified that they moved into the rental unit on May 1, 2014 and that they moved out on February 22, 2019. They stated that monthly rent at the end of the tenancy was \$1,380.00 and that a security deposit of \$625.00 and a pet damage deposit of \$300.00 were paid at the start of the tenancy.

The Landlords testified that the Tenants moved in early on April 8, 2014 and paid an amount of \$300.00 for the period of April 8 to April 30, 2014. They agreed that rent was \$1,380.00 at the end of the tenancy and that a security deposit of \$625.00 was paid. The Landlords stated that a pet damage deposit was never paid.

The Landlords submitted a copy of the tenancy agreement into evidence which indicates the tenancy start date as May 1, 2014 and that there was no pet damage deposit paid.

The Tenants have claimed compensation in the amount of \$1,860.00 which is the return of double their security deposit and pet damage deposit, plus a \$10.00 bank fee that they were charged.

The parties were in agreement that no move-in or move-out inspection was completed in writing. They also agreed that the Tenants' forwarding address was provided in writing on February 22, 2019 and that the Tenants did not agree to any deductions from their deposit in writing. The Landlords confirmed that they have not returned any amount of the deposit to the Tenants.

The Tenants stated that after moving out and providing their forwarding address on February 22, 2019, they did not hear anything regarding the return of the deposit. They testified that on March 13, 2019 they sent a text to the Landlords inquiring about the deposit. They stated that after this the Landlords wrote them a cheque for \$640.00 which they deposited into the bank.

The Tenants submitted into evidence a copy of the cheque dated March 16, 2019 along with information from their bank showing that the payment of the cheque was stopped.

The Tenants also submitted information showing that they were charged a \$10.00 stop payment fee from their bank.

The Tenants stated that they were unsure as to why the Landlords had returned \$640.00 and stated their position that they were owed \$925.00.

The Landlords testified that they wrote the Tenants a cheque in March 2019 as the Tenants were harassing them about the return of the deposit. They agreed that they stopped payment on the cheque and stated that they did so as they realized that the Tenants had not paid a utility bill and due to the Tenants arguing about also having paid a pet damage deposit.

The Landlords submitted testimony and evidence regarding damage to the rental unit including photos and an outline of the amount they stated they spent on repairs. Due to the damages, the Landlords stated that they kept the deposit towards the repair costs, despite the repairs costing more than the amount of the security deposit.

Analysis

As stated in Section 38(1) of the *Act*, a landlord has 15 days from the later date of when the tenancy ends, or the forwarding address is provided in writing to return the security deposit and/or pet damage deposit or file a claim against them.

The parties were in agreement that the tenancy ended on February 22, 2019, the same day that the Tenants' forwarding address was provided in writing. Therefore, I find that the Landlords had 15 days from this date to return the deposit or file a claim to retain the security deposit and/or pet damage deposit.

The Landlords testified that they did not file a claim and that no amount has been returned. Although a cheque was issued, as the payment was stopped, I find that no amount was returned as testified to by both parties.

The Landlords testified as to damages to the rental unit, however I find no evidence before me that the Landlords had a reason to retain the deposit under Section 38 of the *Act*. As stated in this section, a landlord may retain an amount that the tenants agree to in writing, that is ordered through a dispute resolution proceeding, or that remains outstanding from a previous dispute resolution order. I do not find any evidence before me that any of these situations apply and therefore, I find that the Landlords withheld the deposit without authorization to do so.

I also find that as the Landlords did not have authorization to retain the deposit, did not return the deposit to the Tenants, and did not file an Application for Dispute Resolution, that they were not in compliance with Section 38(1) of the *Act*. Therefore, I find that Section 38(6) applies, and the Landlords owe the Tenants double the deposit amount 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.

Regarding the amount paid towards a security deposit and/or pet damage deposit, the parties were not in agreement. While they agreed that \$625.00 was paid for a security deposit, they were not in agreement regarding a \$300.00 payment that the Tenants stated was a pet damage deposit and the Landlord stated was pro-rated rent due to moving in early.

However, in the absence of sufficient evidence that would clarify the amount paid, I look to the tenancy agreement which states that \$625.00 was paid for a security deposit only and does not indicate any payment for a pet damage deposit. As such, I find I do not have sufficient evidence regarding a \$300.00 payment for a pet damage deposit and therefore decline to award the return of this amount.

As I am satisfied that \$625.00 was paid for a security deposit as testified to by both parties and as confirmed by the tenancy agreement, I award the Tenants \$1,250.00 for the return of double the security deposit.

Regarding the Tenants' claim for \$10.00 for bank fee charges, I award the return of the \$10.00 fee to the Tenants. I find that the bank fee was incurred due to the actions of the Landlords who returned the security deposit and then put a stop payment on the cheque. Although the Landlords testified that they stopped payment on the cheque due to a realization that a utility bill had not yet been paid, I find that this did not entitle them to retain the security deposit. Instead, I find that the Tenants incurred a fee due to the Landlords' actions and therefore award the return of \$10.00 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 in the amount of \$100.00. The Tenants are granted a Monetary Order in the amount outlined below:

Return of security deposit	\$625.00
Amount to double security deposit	\$625.00
Return of bank fee	\$10.00
Filing fee	\$100.00
Total owing to Tenants	\$1,360.00

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a **Monetary Order** in the amount of **\$1,360.00** as outlined above. The Tenants are provided with this Order in the above terms and the Landlords must be served with this Order as soon as possible. Should the Landlords 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: October 30, 2019

Residential Tenancy Branch