



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

The tenants apply to recover the balance of a security and pet damage deposit as well as a rebate of rent claiming the landlord wrongfully entered the rental unit after they had vacated but before the term of the tenancy had expired.

The respondent landlord did not attend the hearing within ten minutes after its scheduled start time at 1:30 p.m. on October 28, 2019. The teleconference hearing connection remained open during that time in order to enable the parties to call into the teleconference hearing. The call-in numbers and participant codes provided in the Notice of Hearing were confirmed as correct. The teleconference system audio console confirmed that the tenants and this arbitrator were the only ones who had called into this teleconference during that period.

The tenants showed that the landlord had been duly served with the application by registered mail (tracking number shown on cover page of this decision). Canada Post records show the mail was delivered and signed for by the landlord on August 6, 2019.

The tenants' undisputed evidence is that this tenancy ended May 30, 2019 and that they gave the landlord their forwarding address in writing by letter dated May 28, 2019.

Section 38 of the *Residential Tenancy Act* (the "Act") states that once a tenancy has ended and once the tenants have provided their forwarding address in writing to the landlord, the landlord has a fifteen day period to either pay the deposit money to the tenants or make application to keep all or a portion of it.

In this case the landlord returned only \$471.19 of the \$1375.00 deposit money (\$650.00 security deposit and \$700.00 pet damage deposit).

Section 38 of the *Act* also provides that if the landlord fails to comply, she must account to the tenants for double the deposit remaining at the end of the tenancy. I find that to be the case here. The landlord was not entitled to unilaterally keep any of the deposit money without either the tenants' written consent or an order under the *Act*.

The tenants have not claimed the doubling penalty in their application. Residential Tenancy Policy Guideline 17, "Security Deposit and Set off [*sic*]" provides that I am to award the doubling penalty even when not request in an application, unless the tenants specifically decline the doubling. In this case the question was put to the tenants at hearing and they requested the doubling.

As a result, the tenants are entitled to recover their deposit money doubled to \$2700.00, less the \$471.19 paid, leaving a remainder of \$2228.81

These tenants paid the rent for the month of May 2019 physically relocated early in that month. The landlord entered the rental unit without notice and without the tenants' consent and, by May 17, had torn up the floors even though the tenants had their pots and pans in the home and a bathroom remained fully outfitted with towels and the like.

The tenants cannot point to any particular damage or loss resulting from the landlord's entry. I therefore award the tenants nominal damages of \$100.00 for the trespass.

In result the tenants are entitled to a monetary award totalling \$2328.81 plus recovery of the \$100.00 filing fee for this application. They will have a monetary order against the landlord in the amount of \$2428.81.

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