



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDL-S
 FFT MNDCT MNSD

Introduction

This hearing was scheduled to convene at 1:30 p.m. this date concerning applications made by the landlord and by the tenants which have been joined to be heard together. The landlord has applied for a monetary order for damage to the rental unit or property, an order permitting the landlord to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenants for the cost of the application. The tenants have applied for a monetary order for return of the security deposit or pet damage deposit; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord.

Both tenants attended the hearing and one of the tenants gave affirmed testimony. However the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony and no one for the landlord joined the call. The tenant testified that the landlord was served with the Tenant's Application for Dispute Resolution, evidence and notice of this hearing by registered mail on October 25, 2019. The tenants have provided a Registered Domestic Customer Receipt and a Canada Post cash register receipt bearing that date as evidence for this hearing, and I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*.

Since the landlord has not joined the call, I dismiss the landlord's application in its entirety. All evidence of the tenants has been reviewed and is considered in this Decision.

Issue(s) to be Decided

The issues remaining to be decided are:

- Have the tenants established a monetary claim as against the landlord for return of the security deposit?
- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for the doubling provision of the security deposit?

Background and Evidence

The tenant testified that this fixed term tenancy began on February 1, 2017 and expired on February 1, 2018 thereafter reverting to a month-to-month tenancy which ultimately ended on June 30, 2019. Rent in the amount of \$2,750.00 per month was payable on the 1st day of each month and there are no rental arrears. The rental unit is a townhouse, and the landlord does not reside on the property. A copy of the tenancy agreement has been provided as evidence for this hearing.

The tenant further testified that no move-in or move-out condition inspection reports were completed at the beginning or end of the tenancy. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$1,375.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The tenants provided the landlord with a letter dated July 25, 2019, mailed to the landlord by registered mail on July 26, 2019 which requested return of the security deposit and contained the tenants' forwarding address. A copy of the letter has been provided for this hearing, as well as a Canada Post Delivery Status print-out. It shows that the registered mail was sent on July 26, 2019 and delivered successfully on August 7, 2019. The landlord has not returned any portion of the security deposit to the tenants and the tenants claim double the amount as well as recovery of the \$100.00 filing fee.

Analysis

The *Residential Tenancy Act* is clear; the onus is on the landlord to ensure that move-in and move-out condition inspection reports are completed and the regulations go into detail of how that is to happen. If the landlord fails to do so, the landlord's right to claim against the security deposit or pet damage deposit for damages is extinguished. In this case, I accept the undisputed testimony of the tenant that no reports were completed, and therefore I find that the landlord's right to withhold the security deposit for damages is extinguished. I also accept the undisputed testimony of the tenant that there are no arrears of rent or utilities.

I am also satisfied that the landlord received the tenants' forwarding address in writing on August 7, 2019. The *Residential Tenancy Act* specifies that a landlord must return the security deposit and/or pet damage deposit to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an Application for Dispute Resolution claiming against the deposit(s) within that 15 day period. If the landlord fails to do either, the landlord must repay the tenant double the amount of the deposit(s). In this case, having found that the landlord's right to claim against the security deposit for damages is extinguished, I find that the landlord had 15 days from August 7, 2019 to claim unpaid rent or utilities, or to return the security deposit to the tenants. The landlord did not claim unpaid rent or utilities and failed to return the security deposit to the tenants, and therefore I find that the tenants are entitled to double the amount, or \$2,750.00.

Since the tenants have been successful with the application the tenants are also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,850.00.

This order is final and binding and may be enforced.

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: December 10, 2019

Residential Tenancy Branch