



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

On August 27, 2019, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") for the Landlords to return of all or part of the pet damage deposit or security deposit, and to recover the filing fee for the Application.

The matter was scheduled as a teleconference hearing.

The Tenants appeared at the hearing; however, the Landlords did not. The Tenants provided affirmed testimony that they served the Landlords with the Notice of Hearing using Canada Post Registered Mail sent on September 6, 2019. The Tenants testified that the mail was addressed to the Landlord at the dispute address because the Landlords live above the rental unit.

I find that that the Notice of Hearing documents were served to the Landlords in accordance with sections 89 and 90 of the Act. The Notice of Hearing is deemed to have been received by the Landlords on September 11, 2019, the fifth day after it was mailed.

The hearing proceeded and the Tenants were asked if they had any questions. The Tenants provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the 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 double the security deposit and or pet damage deposit?

Background and Evidence

The Tenants testified that the tenancy began in June 2017, on a month to month basis. Rent in the amount of \$1,100.00 was due each month. The Tenants paid the Landlord a security deposit of \$550.00 and a pet damage deposit of \$300.00. The Tenants testified that they moved out of the rental unit on July 31, 2019.

The Tenant testified that the Landlords did not return any amount of the security deposit and pet damage deposit to them after the tenancy ended.

The Tenant testified that there is no written agreement that the Landlords could retain any amount of the security deposit and pet damage deposit.

The Tenants testified that they provided the Landlords with their forwarding address in writing on July 31, 2019 when the Landlord conducted a move out inspection and completed a condition inspection report. The Tenants testified that the Landlord failed to provide the Tenants with a copy of the move in and move out condition inspection reports.

The Tenants testified that they contacted the Landlord after the tenancy ended inquiring about the return of the security deposit and pet damage deposit, and the Landlord told them that the Landlord has decided to keep the deposits due to damage to a carpet.

The Tenants are seeking a monetary order in the amount of \$1,700.00 which is double the amount of the security deposit and pet damage deposit.

Analysis

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

Section 38 (1) of the Act states that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must repay any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations or make an application for dispute resolution claiming against the security deposit.

Section 38 (6) of the Act provides that if a Landlord does not comply with subsection (1), the Landlord must pay the Tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find that the tenancy ended when the Tenant moved out of the rental unit on July 31, 2019. I accept the Tenants testimony that the Tenants provided their forwarding address to the Landlords on July 31, 2019.

There is no evidence before me that the Landlords applied for dispute resolution within 15 days of receiving the Tenant's forwarding address. I find that there was no written agreement that the Landlords could retain the security deposit or pet damage deposit.

If the Landlords wished to retain the deposits for any reason, including damage to a carpet, the Landlords were required to apply against the deposits within 15 days of July 31, 2019.

I find that the Landlord's breached section 38 of the Act. Pursuant to section 38(6) of the Act, the Landlords must pay the Tenants double the amount of the security deposit.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlords to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution.

I order the Landlords to pay the Tenants the amount of \$1,800.00. I grant the Tenants a monetary order in the amount of \$1,800.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlords are cautioned that costs of such enforcement are recoverable from the Landlords.

Conclusion

The Landlords failed to return the security deposit and pet damage deposit to the Tenant in accordance with the legislation.

The Tenants are granted double the amount of the security deposit and pet damage deposit. I grant the Tenant a monetary order in the amount of \$1,800.00.

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: January 03, 2020

Residential Tenancy Branch