



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- authorization to obtain a return of all or a portion of her security and/or pet damage deposits pursuant to section 38.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenants served the landlord with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on October 24, 2019. Both parties confirmed the landlord served the tenants with the submitted documentary evidence via Canada Post Registered Mail on February 24, 2020. I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for return of the security/pet damage deposits?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on June 15, 2018 as per the submitted copy of the signed tenancy agreement dated June 4, 2018. The monthly rent began at \$2,600.00. A security deposit of \$1,400.00 and a pet damage deposit of \$500.00 were paid.

During the hearing that tenants clarified that they seek a monetary claim for return of the security and pet damage deposits for \$3,800.00 which consists of:

\$1,400.00	Security Deposit
\$500.00	Pet Damage Deposit
\$1,400.00	Compensation, Fail to Comply Sec. 38(6), Security Deposit
\$500.00	Compensation, Fail to Comply Sec. 38(6), Pet Damage Deposit

Both parties confirmed the tenancy ended on September 30, 2019 when possession was returned to the landlord. Both parties confirmed that the tenants paid a \$1,400.00 security deposit and a \$500.00 pet damage deposit to the landlord.

Both parties confirmed the tenants provided their forwarding address in writing for return of the security and pet damage deposits. The tenants claim that this was given to the landlord in person on September 30, 2019. The landlord claims that the September 30, 2019 date was possible, but that she thinks it occurred several days earlier.

The landlord repeatedly argued that the combined deposits were retained due to the damage caused to the rental unit by the tenants and that the costs exceed these deposits.

The landlord stated that at no time did she return the combined deposits as she had used it to pay for some of the damage/repairs. The landlord further stated that at no time has she filed an application for dispute of returning those same deposits.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

In this case, I accept the undisputed evidence of both parties that the tenancy ended on September 30, 2019 and that the tenants provided their forwarding address in writing for

the return of the \$1,400.00 security and the \$500.00 pet damage deposits on or before September 30, 2019. In this case, the landlord provided undisputed affirmed testimony that she retained both deposits using them for damages/repairs and did not file an application to dispute their return to the tenants.

I find based upon the above that the tenants have established a claim for return of \$1,900.00 for the return of the combined security and pet damage deposits. The landlord did not return the deposit(s), nor did she file an application to dispute its return.

I also find pursuant to section 38 (6) that the landlord having failed to comply with 38 (1) must pay the tenants an amount equal to the combined security and pet damage deposits of \$1,900.00.

The tenants have established a total monetary claim of \$3,800.00.

Conclusion

The tenants are granted a monetary order for \$3,800.00.

This order must be served upon the landlord. Should the landlord fail to comply with this order, the 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: March 06, 2020

Residential Tenancy Branch