



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

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

- a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 1:40 p.m. in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 p.m. The tenants attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenants and I were the only ones who had called into this teleconference.

The tenants testified that they served the landlord with their application for dispute resolution via registered mail on December 21, 2019. A Canada Post registered mail receipt stating same was entered into evidence. I find that the landlord was deemed served with the tenants' application for dispute resolution on December 26, 2019, five days after its mailing, in accordance with sections 89 and 90 of the *Act*.

Issues to be Decided

1. Are the tenants entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act*?

2. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the tenants, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

The tenants provided the following undisputed testimony. This tenancy began on April 1, 2018 and ended on November 30, 2019. Monthly rent in the amount of \$1,785.00 was payable on the first day of each month. A security deposit of \$892.50 and a pet damage deposit of \$500.00 were paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The tenants testified that at the end of the tenancy the landlord left a copy of the move out inspection report in their mailbox for them to complete along with a letter dated November 29, 2019 which stated in part:

Please perform the move out inspection on Saturday by completing the Condition of Rental Property Checklist enclosed. Return it signed and completed with 3 (three) sets of keys to the suite (one for each person who resided in the unit) in your mailbox. Your security deposits and any remaining post-dated cheques will be returned to you within 10 business days by mail at the address you provide below.

The November 29, 2019 letter left a space for the tenants to provide their forwarding address. The tenants entered into evidence a copy of the November 29, 2019 letter with their forwarding address on it. The tenants testified that they left the November 29, 2019 letter with their forwarding address on it in the mailbox of the subject rental property as requested by the landlord. The tenants testified that they also emailed the landlord and the property manager with their forwarding address on November 30, 2019. The November 30, 2019 email was entered into evidence.

The tenants testified that the landlord returned \$1,218.21 of their deposits via cheque to their forwarding address on or around December 10, 2019. The tenants testified that the landlord withheld \$174.29 from their deposits without their consent and did not file an application with the Residential Tenancy Branch to obtain authority to retain any portion of their deposits.

The tenants testified that in addition to paying a \$500.00 pet damage deposit, the landlord charged them a \$25.00 monthly fee for having pets. The tenants testified that it was illegal for the landlord to charge them this fee and are seeking the landlord return it for the duration of their tenancy which was 19 months. $19 \times \$25.00 = \475.00 .

Clause 13 of the Tenancy Agreement states:

If a pet has been approved by the Landlord to reside with the Tenants in the Tenant's premises, a monthly pet fee of \$25.00 per pet will be added to the rent as an additional charge.

Analysis

I find that the landlord was sufficiently served, for the purpose of this *Act*, pursuant to section 71 of the *Act*, with the tenants' forwarding address in writing by December 10, 2019 because the landlord returned a portion of the tenants' deposits to the forwarding address provided by the tenants on or around this date.

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

However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

Section C(3) of Policy Guideline 17 states that unless the tenants have specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the *Act*.

Based on the undisputed testimony of the tenants and the tenancy agreement, I find that the tenants paid to the landlord, a security deposit in the amount of \$892.50 and a

pet damage deposit in the amount of \$500.00. I accept the tenants' testimony that they did not authorize the landlord to retain any amount from their deposits and that the landlord retained \$174.29 from their deposits without their permission. The landlord did not file an application with the Residential Tenancy Branch for permission to retain any portion of the tenants' deposits.

Pursuant to my above findings and the application of section 38 of the *Act* and Policy Guideline 17, I find the tenants are entitled to receive double their security deposit and pet deposit as per the below calculation:

$\$1,392.50$ (total deposits) * 2 (doubling provision) - $\$1,218.21$ (amount landlord returned to the tenants) = **\$1566.49**

Section 7 of the Regulations to the Residential Tenancy Act states:

Non-refundable fees charged by landlord

7 (1) A landlord may charge any of the following non-refundable fees:

- (a) direct cost of replacing keys or other access devices;
- (b) direct cost of additional keys or other access devices requested by the tenant;
- (c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;
- (d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;
- (e) subject to subsection (2), a fee that does not exceed the greater of \$15 and 3% of the monthly rent for the tenant moving between rental units within the residential property, if the tenant requested the move;
- (f) a move-in or move-out fee charged by a strata corporation to the landlord;
- (g) a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

I find that pet fees are not listed under section 7 of the *Act* as a fee the landlord is entitled to charge the tenants. I therefore find that the pet fee was improperly collected and must be refunded to the tenants. I Order the landlord to return the \$475.00 in improperly collected fees to the tenants. I note that monies paid towards pets are properly captured as a pet damage deposit and not a fee.

As the tenants were successful in their application for dispute resolution, I find that they are entitled to recover the \$100.00 filing fee from the landlord, in accordance with section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the tenants under the following terms:

Item	Amount
Doubled deposits	\$1566.49
Refund pet fee	\$475.00
Filing Fee	\$100.00
TOTAL	\$2,141.79

The tenants are provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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: April 03, 2020

Residential Tenancy Branch