



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, MNRL-S, FFL

Introduction

On December 1, 2019, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit and pet damage deposit towards these debts pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*. This Application was set down for a hearing on May 4, 2020 at 1:30 PM.

Both Tenants attended the hearing with G.K. attending as an advocate for the Tenants. However, the Landlord did not make an appearance during the 13-minute teleconference call. The Tenants provided a solemn affirmation.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit and pet damage deposit towards these debts?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenants advised that the tenancy started on October 1, 2018 and ended when they gave up vacant possession of the rental unit on October 31, 2019. Rent was established at \$3,250.00 per month and was due on the first day of each month. A security deposit of \$1,625.00 and a pet damage deposit of \$1,625.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

The Tenants advised that they provided their forwarding address to the Landlord by registered mail in October 2019 in a letter notifying the Landlord that they would be ending their tenancy. As well, they emailed the Landlord with their forwarding address on October 29, 2019. They confirmed that the address they provided was the same address that the Landlord used for this Application. Furthermore, they confirmed that they were served the Landlord's Notice of Hearing package at this same address also.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

I dialed into the teleconference at 1:30 PM and monitored the teleconference until 1:43 PM. The Applicant did not dial into the teleconference during this time. 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 Respondents and G.K. were the only people who had called into this teleconference.

As the Landlord did not attend the hearing by 1:43 PM, I find that the Application for Dispute Resolution has been abandoned.

With respect to the Landlord's claims against the Tenants' security deposit and pet damage deposit, Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposits. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposits, and the Landlord must pay double the deposits to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the consistent and undisputed evidence before me, the Tenants solemnly affirmed that they provided the Landlord with their forwarding address on or around October 2019 and that the Landlord made an Application, using this address, to keep the deposits on December 1, 2019. As the Landlord's Application was outside the timeframe to deal with the deposits pursuant to Section 38 of the *Act*, and as there is no evidence before me that the Landlord returned the deposits in full within 15 days of receiving the Tenants' forwarding address, I am satisfied that the Landlord breached the requirements of Section 38 and illegally withheld the deposits. As such, I find that the doubling provisions of the *Act* do apply in this instance and I award the Tenants a monetary award in the amount of **\$6,500.00**, which represents double the security and pet damage deposits.

As the Landlord has not attended the hearing, I am not satisfied that the Landlord has sufficiently established his claims. As a result, I dismiss his claims in their entirety. Moreover, as the Landlord was not successful in this Application, I find that he is not entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenants

Doubling of the security deposit	\$3,250.00
Doubling of the pet damage deposit	\$3,250.00
TOTAL MONETARY AWARD	\$6,500.00

Conclusion

The Tenants are provided with a Monetary Order in the amount of **\$6,500.00** 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: May 4, 2020

Residential Tenancy Branch