



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A participatory hearing was held, via teleconference, on March 11, 2021. The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- An order that the Landlord return all or part of the security deposit or pet damage deposit

The Tenants and the Landlord attended the hearing. All parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Tenants entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?

Background and Evidence

The Tenants stated that they moved into this rental unit in April 2016, and moved out November 1, 2020. Both parties agree that monthly rent was \$700.00 and was due on the first of the month, but the parties disagree on the amount of the security deposit.

The Tenants provided a copy of a receipt the Landlord issued at the start of the tenancy, which shows the Tenants paid, and the Landlord received, \$350.00 on April 1, 2016. The Landlord acknowledged getting this amount, but stated that the Tenants took back \$100.00 of this amount right away. The Tenants deny this occurred, and feel the Landlord is either confused or lying. The Landlord had no evidence to support the Tenants only paid \$250.00.

The Landlord confirmed receiving the Tenants' forwarding address in writing on November 1, 2020, by way of the letter provided into evidence. The Tenants stated that the Landlord sent them a cheque for \$290.00 shortly after but they did not cash it because it was not the right amount. The Tenants stated they did not authorize any deductions to the deposit.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

First, I turn to the amount of the deposit. I note there is a receipt, signed by the Landlord, indicating the security deposit of \$350.00 was received on April 1, 2016. The Landlord does not deny signing this receipt. The Landlord has no evidence to support that the Tenants took back \$100.00, or that he only collected \$250.00. Based on the evidence before me, I find it more likely than not that the Tenant's paid \$350.00, as per the receipt, especially given the absence of evidence showing it was otherwise.

In this case, both parties confirmed that the Tenants moved out of the rental unit on November 1, 2020, which I find reflects the end of the tenancy. The Landlord confirmed that he got the Tenants' forwarding address in writing on this same day.

There is no evidence that the parties came to any agreement about deductions from the security deposit. Further, neither party raised any issue regarding extinguishment.

Pursuant to section 38(1) of the Act, the Landlord had 15 days from receipt of the forwarding address in writing (November 16, 2020) to either repay the security deposit (in full) to the Tenants or make a claim against it by filing an application for dispute resolution. The Landlord returned part of the deposit, but I note this cheque was not cashed, as it did not have the Tenants full names on it, and it was not for the full amount. Since the Landlord did not return the full amount of the deposit I find the Landlord breached section 38(1) of the Act.

Accordingly, as per section 38(6)(b) of the Act, I find the Tenants are entitled to recover double the amount of the security deposit (\$350.00 x 2). Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution.

The Tenants are ordered not to cash the cheque the Landlord sent for \$290.00 in November 2020. The Landlord is required to pay the Tenants the full amount, via a newly issued cheque in the amount of \$700.00, as laid out above.

Conclusion

I grant the Tenants a monetary order in the amount of **\$700.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenants may file the order in the Provincial Court (Small Claims) and be 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 11, 2021

Residential Tenancy Branch