



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

On November 16, 2020, the Tenants submitted an Application for Dispute Resolution under the *Act* for the return of a security deposit and or pet damage deposit; and to recover the cost of the filing fee.

On February 19, 2021, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") for a monetary order for unpaid rent, a monetary order for damage to the unit; for monetary owed or compensation for damage or loss, to keep the security deposit; and to recover the cost of the filing fee.

The matter was set for a conference call hearing. The Landlord's agent and legal counsel attended the first teleconference hearing. The owner and his agent attended the second teleconference hearing. Both Tenants attended the first hearing and only one Tenant attended the second hearing.

At the start of the hearings, I introduced myself and the participants. The Landlord and Tenants provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

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.

Preliminary and Procedural Matters

At the first hearing the Landlord's counsel stated that she was just retained on March 26, 2021. Counsel submitted that this matter should be adjourned because it would be

prejudicial to the Landlord to proceed today. She submitted that there would be no prejudice to the Tenants if the matter was adjourned as they could have an opportunity to review and consider the Landlord's evidence.

I declined the Landlord's request for an adjournment for the following reasons: The parties testified that the tenancy ended on or around October 23, 2020. A quick review of the Landlord's documentary evidence shows documents dated from August 2019 to October 2020 and 13 photographs of the rental unit. There were no receipts located in the Landlord's evidence. The Landlord had the evidence available because he uploaded a copy of his evidence to the RTB case management system on March 4, 2021. The Landlord's documentary evidence is not new, and the Landlord had up until March 15, 2021 to serve the documentary evidence to the respondents. I find that the Landlord's failure to serve his documentary evidence in accordance with the rules of procedure does not outweigh the prejudice to the Tenants if the matter was adjourned.

The Landlord's evidence was excluded as it was not served in accordance with the rules of procedure and it would be unfair for me to consider evidence that the Tenants did not have an opportunity to consider or respond to.

The first hearing continued for approximately two hours which was insufficient time for the Landlord to provide their testimony regarding the Landlord's claim. The hearing was adjourned and rescheduled.

At the start of the second hearing, the Tenant mentioned that he received email from the Landlord's counsel indicating the Landlord's claim was withdrawn. The Landlord's counsel was not present at the second hearing. The owner of the property and his agent were unclear on whether or not they wanted to proceed.

The Landlord and Tenant agreed that the Landlord's application will be dismissed with leave to reapply.

Since the Tenants' application was fully heard at the first hearing, there was no need to proceed with further testimony.

Issue to be Decided

- Are the Tenants entitled to the return of a security deposit and pet damage deposit?

Background and Evidence

The Landlord and Tenants testified that the tenancy began on April 1, 2019 as a one-year fixed term tenancy that continued thereafter on a month-to-month basis. Rent in the amount of \$4,800.00 was to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit in the amount of \$2,400.00 and a pet damage deposit in the amount of \$2,400.00. The parties testified that the tenancy ended on October 23, 2020 when the Tenants moved out of the rental unit.

Security Deposit

The Tenants are seeking a monetary order to recover the security deposit and pet damage deposit. The Tenants are also seeking to recover a \$400.00 key fob deposit for a gate and garage door.

The Tenants moved out of the rental unit on October 23, 2020 and they testified that they provided their forwarding address to the Landlord on October 23, 2020.

The Tenants testified that there was no written agreement that permitted the Landlord to keep any amount of the security deposit or pet damage deposit. The Tenants testified that the Landlord has not returned any amount of the security deposit or pet damage deposit to them. The Tenants testified that the Landlord has not returned the \$400 key deposit to them.

The Tenants testified that the Landlord did not make an application to claim against the deposits. The Tenants testified that the Landlord did not complete a condition inspection report with them at the start of the tenancy.

The Tenants are seeking \$9,600.00 which is double the amount of the security deposit and pet damage deposit and also seek \$400.00 for the key fob deposit.

In reply, the Landlord's agent provided testimony agreeing that the Tenants' forwarding address was received by the Landlord on October 23, 2020. The Landlord's agent stated that they have not returned any amount of the security deposit or pet damage deposit, or key fob deposit, to the Tenants. The Landlord's agent testified that he received the keys on October 24, 2020.

The Landlord's agent testified that there was no written agreement authorizing the Landlord to retain any amount of these deposits, and that the Landlord did not apply for dispute resolution and make a claim against the deposits within 15 days of receiving the Tenants' forwarding address.

Analysis

Section 38 (1) of the Act provides 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 or pet damage 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 Tenants provided their forwarding address to the Landlord on October 23, 2020. I find that the Landlord did not return the security deposit and pet damage deposit to the Tenants and did not apply for dispute resolution within 15 days of receiving the Tenants' forwarding address. I find that there was no written agreement that the Landlord could keep the security deposit or pet damage deposit.

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

I order the Landlord to pay the Tenants the amount of \$9,600.00. I also find that the Tenants returned the keys to the Landlord on October 24, 2020. I order the Landlord to return the key deposit of \$400.00 to the Tenants.

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

I grant the Tenants a monetary order in the amount of \$10,100.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Landlord failed to return or apply against the security deposit and pet damage deposit in accordance with section 38 of the Act.

The Tenants are granted double the amount of the security deposit and pet damage deposit. The Tenants are also awarded the return of a \$400.00 key deposit and the cost of the filing fee. I grant the Tenants a monetary order in the amount of \$10,100.00.

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: September 8, 2021

Residential Tenancy Branch