



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

On April 1, 2021, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for the Landlord to return of all or part of the pet damage deposit or security deposit, and to recover the filing fee for the Application.

The matter was scheduled as a teleconference hearing. The Tenants and Landlord. appeared at the hearing.

The hearing process was explained, and the participants were asked if they had any questions. All participants in the hearing provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

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.

Issues to be Decided

- Are the Tenants entitled to the return of a security deposit and pet damage deposit?
- Are the Tenants entitled to recover the cost of the filing fee?

Background and Evidence

The Tenants and Landlord testified that the tenancy began on July 15, 2020 and ended on March 13, 2021. Rent in the amount of \$3,380.00 was due to be paid to the Landlord by the first day of each month. The parties agreed that the Tenants paid the

Landlord a security deposit of \$1,650.00 and a pet damage deposit of \$1,650.00. The Tenants provided a copy of the tenancy agreement.

The Tenants testified that the Landlords did not return the security deposit or pet damage deposit to them after the tenancy ended.

The Tenants testified that there was no agreement that the Landlords could retain any amount of the security deposit or pet damage deposit.

The Tenants testified that they provided the Landlord with their forwarding address in writing on January 29, 2021 in person. The Tenants provided a copy of a letter dated January 29, 2021 containing their forwarding address.

In reply, the Landlord testified that he did not return the security deposit and pet damage deposit to the Tenants and that he did not apply for dispute resolution to make a claim against the deposits.

The Landlord testified that there was no written agreement permitting him to keep any amount of the deposits. The Landlord confirmed that he received the Tenants' January 29, 2021 letter ending the tenancy and providing their forwarding address.

The Landlord stated that the Tenants failed to pay all the rent owing under the tenancy agreement, so the Landlord kept the security deposit and pet damage deposit.

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 tenants 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.

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

I find that the tenancy ended on March 13, 2021 and the Tenants had already provided their forwarding address to the Landlord on January 29, 2021. I find that the Landlord did not apply for dispute resolution to claim against the deposits within 15 days of the tenancy ending. I find that there was no agreement from the Tenants that the Landlord could retain the security deposit or pet damage deposit.

If the Landlord wanted to keep the deposits towards unpaid rent or any other reason, the Landlord was required to apply against the deposits within 15 days.

I find that the Landlord's 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 \$6,600.00.

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 \$6,700.00. 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 the security deposit and pet damage deposit to the Tenants in accordance with the legislation.

The Tenants are granted double the amount of the security deposit and pet damage deposit. I grant the Tenants a monetary order in the amount of \$6,700.00.

The Landlord is at liberty to apply for dispute resolution if he wants to pursue his claim regarding unpaid rent; however, his right to apply against the deposits has expired.

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: October 21, 2021