



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; a monetary order for return of the security deposit or pet damage deposit; and to recover the filing fee from the landlords for the cost of the application.

Both named tenants and both named landlords attended the hearing, and the tenants were also accompanied by a spouse and an Articled Student.

One of the tenants and one of the landlords gave affirmed testimony. The parties were given the opportunity to question each other.

At the commencement of the hearing the tenants' Articled Student advised that all evidence of the tenants had been provided to the landlords by registered mail on June 5, 2023, and the landlords agree. However, the tenants' Articled Student also submitted that the landlords' evidentiary material was not served properly, but by Xpresspost and not within the time permitted; tracking information shows that the package was accepted at Canada Post on June 17, 2023 and was received on June 20, 2023 which is 4 days after it should have been served. The tenants' Articled Student also submitted that instead of adjourning, the tenants prefer to continue the hearing without considering any of the landlords' evidence.

The landlord submitted that the evidence was uploaded to the Residential Tenancy Branch site on May 24, 2023 and sent to the tenants, but is not sure when. The landlord asked that it be sent the quickest way. Evidence uploaded on June 16 was sent probably on the 17th of June by Xpresspost.

Each party has the responsibility to ensure that proof of serving evidence is available for a hearing. The Rules of Procedure require that a respondent must upload and provide all evidence to the applicant no less than 7 days prior to the hearing. Section 88 of the *Residential Tenancy Act* specifies that documents sent by registered mail, which I find includes Xpresspost, is deemed to have been served 5 days later. Therefore, sending evidence in that manner 6 days prior to the hearing is not compliance, and I decline to consider the landlords' evidentiary material.

All evidence of the tenants has been reviewed, and only the evidence I find relevant to this application is considered in this Decision.

Issue(s) to be Decided

- Have the tenants established a monetary claim as against the landlords for return of all or part of the pet damage deposit or security deposit?
- Have the tenants established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for double the amount of the security deposit or pet damage deposit?

Background and Evidence

The tenant (RDM) testified that this fixed-term tenancy began on December 1, 2018 and reverted to a month-to-month tenancy after November 30, 2019, which ultimately ended on February 28, 2022, although the tenants vacated the rental unit on February 13, 2022. Rent in the amount of \$1,500.00 was payable on the 1st day of each month, and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$1,500.00 as well as a pet damage deposit in the amount of \$750.00. The rental unit is a lower suite house with 2 suites, and the landlords resided in the upper level. No move-in or move-out condition inspection reports were completed.

The tenant further testified that the tenants gave notice to end the tenancy in writing, and a copy has been provided for this hearing. It is dated January 29, 2022 and contains an effective date of vacancy of February 28, 2022. It also suggests that the landlords should keep the \$1,500.00 security deposit for February's rent, which the landlords agreed to, and provides a forwarding address for the pet damage deposit to be returned.

The parties inspected the rental unit at move-out on February 13, 2022 but no report was made, and to the tenant's understanding the walk-through was final which lasted approximately 1 hour. Within that time, the landlord was saying that everything looked fine except for normal wear and tear. The landlord confirmed that the pet damage deposit would be returned.

The tenants have not received the pet damage deposit from the landlords and there was no damage caused by a pet.

The landlord testified that no move-in condition inspection report was completed because the parties were all in a rush.

The landlord disputes the tenant's testimony that there was no report completed at move-out, and there were damages. The tenants were requested to participate in the inspection on February 15 and February 22, 2022.

Analysis

Firstly, a landlord may not accept more than half a month's rent for a security deposit. In this case, the landlords accepted a full month's rent. The tenant testified that the parties agreed that the landlords retain the security deposit for the last month's rent, and the landlord did not dispute that. Therefore, I find that the landlords have returned the \$1,500.00 security deposit.

A landlord must return a security deposit and/or pet damage deposit in full to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an application for dispute resolution claiming against the deposit(s) within that 15 day period. If the landlord fails to do either, the landlord must repay double the amount.

However, the law also places the onus on the landlord to ensure that the move-in and move-out condition inspection reports are completed in accordance with the regulations. If the landlord fails to do so, the landlord's right to make a claim for damages against the deposit(s) is extinguished. Therefore, unless a landlord has a claim for unpaid rent or utilities, the landlord may not keep the deposit(s).

In this case, the tenancy ended on February 28, 2022 and the tenants provided a forwarding address in writing on January 29, 2022. Therefore, the landlords had until March 15, 2022 to return the pet damage deposit to the tenants. Whether or not there are claimable damages, the landlords' right to make a claim against the deposits for

damages was extinguished from the beginning of the tenancy. Therefore, the landlords must repay the tenants double the amount of the pet damage deposit, or \$1,500.00.

Since the tenants have been successful with the application the tenants are also entitled to recovery of the \$100.00 filing fee.

I grant a monetary order in favour of the tenants as against the landlords in the amount of \$1,600.00.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,600.00.

This order is final and binding and may be enforced.

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: June 23, 2023

Residential Tenancy Branch