



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order to recover the security and pet deposit and to recover the filing fee from the landlords for the cost of this application.

The tenant and landlords attended the conference call hearing and gave sworn testimony. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order to recover the security or pet deposit?

Background and Evidence

The parties agreed that this tenancy started originally in September, 2010. At that time there were two tenants named on the tenancy agreement. The other tenant vacated the unit in September, 2011 and a new tenancy agreement was entered into with this sole tenant on October 01, 2011 for a month to month tenancy. The parties also agree that a move in condition inspection report was completed with the parties at the start of the tenancy in 2010. This tenant paid a security deposit of \$850.00 and a pet deposit of \$850.00 on October 01, 2011. At the end of the tenancy the landlords did not complete a move out condition inspection with this tenant and did not give the tenant at least two opportunities to attend an inspection. The tenant vacated the unit on May 01, 2013.

The tenant testified that he gave the landlords a forwarding address in writing on May 01, 2013. The tenant agreed that he only lived at that property for a month; however, the landlords were required to return the tenant's security and pet deposit or file an application to keep the deposits within 15 days and failed to do so.

The tenant testified that he sent the landlords another letter containing his new forwarding address on February 26, 2014 and again requested the landlords to return the security and pet deposit. The tenant agreed that the landlords did send the tenant a cheque for \$850.00 for his pet deposit on March 16, 2014 which again was outside the 15 day time frame. The tenant testified that he does not waive his right to now recover double the security and pet deposit from the landlords minus the amount returned on March 16, 2014.

The tenant agreed that the landlords may deduct the amount of \$43.37 for an outstanding hydro bill and \$9.89 for an outstanding water bill from his monetary award. The tenant seeks to recover the \$50.00 filing fee from the landlords.

The landlords testified that the tenancy was due to end on April 30, 2013; however, the tenant remained in the unit until May 01, 2013. When the landlord arrived the tenant was still in the process of moving out and did not return to the unit. The landlords testified that due to this they could not arrange to do the move out inspection with the tenant. The landlords agreed that they did not write to the tenant to give the tenant opportunity to return to do the inspection.

The landlords testified that as the unit required cleaning and there were amounts owing for late fees and utilities the landlords deducted these amounts from the tenant's security deposit and sent the tenant a cheque on September 04, 2013 for \$850.00 for his pet deposit. This cheque was returned to the landlords because the tenant no longer resided at that address the tenant gave the landlords on May 01, 2013.

The landlords testified that they did manage to text the tenant after receiving his new forwarding address in February, 2014 and had conversations with the tenant to attempt to resolve this matter. A further cheque was sent to the tenant for his security deposit on March 16, 2014 for \$850.00. The landlord testified that they did not send the first cheque within the 15 day time frame as they were waiting for final utility bills to come in.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to Section 38(1) of the *Act* which says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security and pet deposit to the tenant or to make a claim against them by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security and pet deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that the landlords did receive the tenant's forwarding address in writing on May 01, 2013. As a result, the landlords had until May 16, 2013 to return the tenant's security and pet deposit. I find the landlords did not return the security or pet deposit within the 15 days time frame. I further find the landlords have extinguished their right to file a claim against the deposit as the landlords failed to complete a move out condition inspection of the property with the tenant in accordance with s. 36(2) of the *Act* or give the tenant at least two opportunities to attend an inspection at the end of the tenancy. Section 38(6) provides that if the landlords do not comply with section 38(1), the landlords must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue and even though the tenant did not apply for double the security deposit the tenant is still entitled to recover the doubled portion. Therefore, I find that the tenant has established a claim for the return of double the security and pet deposit pursuant to section 38(6)(b) of the *Act*.

As the landlords have since returned the amount of \$850.00 I will deduct this from the tenant's monetary award along with the amount of \$53.26 for utilities which the tenant agreed could be deducted at the hearing today.

As the tenant has been successful with his claim I find the tenant is also entitled to recover the \$50.00 filing fee from the landlords pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the tenant pursuant to s. 67, 38(6)(b) and 72(2) of the *Act* as follows:

Double the security and pet deposit	\$3,400.00
Less amount already returned	(-\$850.00)
Less utilities	(-\$53.26)
Plus filing fee	\$50.00
Total amount due to the tenant	\$2,546.74

Conclusion

I HEREBY FIND in favor of the tenant's amended monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$2,546.74**. The Order must be served on the respondents. Should the respondents fail to comply with the Order the Order may be enforced through the Provincial Court 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: July 24, 2014

Residential Tenancy Branch

