



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: MNSD, MNDC, FF
 Tenants: MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking monetary orders.

The hearing was conducted via teleconference and was attended by both landlords and their daughter and both tenants.

These parties were participated in a hearing conducted on March 22, 2016 based on the landlord's Application for Dispute Resolution received by the Residential Tenancy Branch on December 14, 2016. That Application from the landlord included a request for a monetary order for damage to the rental unit; to retain the security deposit; and for compensation for damage or losses suffered as a result of the tenancy, including the cost of cleaning; repairs; and lost revenue in the amount of \$1,565.00.

In the decision provided by the arbitrator on the same day as the hearing the arbitrator dismissed the landlord entire claim but did not deal with the disposition of the security deposit. As a result, the tenants submitted an Application for Dispute Resolution on March 31, 2016 seeking double the amount of the security deposit.

On July 14, 2016 the landlord submitted a new Application for Dispute Resolution seeking compensation for lost revenue and to retain the security deposit.

Res judicata is the doctrine that an issue has been definitively settled by a judicial decision. The three elements of this doctrine, according to Black's Law Dictionary, 7th Edition, are: an earlier decision has been made on the issue; a final judgment on the merits has been made; and the involvement of the same parties.

At the outset of the hearing I advise both parties that because the landlord's claim for compensation had been adjudicated at the hearing of March 22, 2016 I considered the matter already dealt with and I would not adjudicate that portion of the landlords' claim. Technically, I have determined that the matter is considered *res judicata* as defined above.

As a result, the disposition of the security deposit remained as the only matter requiring adjudication from both the landlords' Application and the tenants' Application.

Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to retain the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

In the alternative it must be decided if the tenants are entitled to a monetary order for return of double the amount of the security deposit and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The parties agreed the tenancy began in March 2014 as a month to month tenancy for a monthly rent of \$950.00 that was due on the last day of each month prior to the tenancy period and a security deposit of \$475.00 was paid.

The parties confirmed the tenancy ended on November 30, 2015.

As noted above the landlords submitted their original Application for Dispute Resolution seeking to retain the security deposit on December 14, 2015. I also note again that the arbitrator in the decision resulting from the hearing that was scheduled on the basis of that Application did not mention the security deposit at all. Finally, I note that the decision in response to that Application did dismiss the landlord's claims for damage and lost revenue.

Analysis

As the decision of March 22, 2016 dismissed the landlords' claims for any compensation and I have determined that the landlords' new Application is *res judicata* I find the tenants are entitled to return of the security deposit.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

From the above, I find that the landlords filed their original Application for Dispute Resolution seeking to retain the security deposit 14 days after the end of the tenancy and as such, I find the landlords have complied with the requirements of Section 38(1). Therefore, I find the tenants are not entitled to double the amount

Conclusion

Based on the above, I dismiss the landlords' Application for Dispute Resolution in its entirety and without leave to reapply.

I find the tenants is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$575.00** comprised of \$475.00 security deposit owed and the \$100.00 fee paid by the tenants for theirs application.

This order must be served on the landlords. If the landlords fail 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: August 11, 2016

Residential Tenancy Branch