



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

On July 18, 2016, the Tenant submitted an Application for Dispute Resolution for the return of all or part of the pet damage deposit or security deposit.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, 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.

Preliminary and Procedural Matters

The Tenant submitted that the Landlord was served with Notice of the hearing by registered mail on July 19, 2016. The Tenant provided a copy of the Registered Mail receipt as proof of service.

The Landlord testified that on January 6, 2017, he faxed documents, including a Condition Inspection Report, into the Residential Tenancy Branch (“RTB”) in response to the Tenant’s claim. At the time of this hearing no documentary evidence has been received at the RTB from the Landlord. The Tenant did not submit any evidence of a fax transmission sheet showing that the evidence was received.

The Tenant does not have a copy of the Condition Inspection Report.

A query of the RTB case management system returned no record that the RTB has received a fax submission of evidence from the Landlord.

The Landlord is responsible to ensure that any documentary evidence sent to the RTB is received.

Issues to be Decided

- Is the Tenant entitled to the return of the security deposit?

Background and Evidence

Both parties testified that the tenancy commenced on April 1, 2016, as a one year fixed term tenancy. Rent in the amount of \$1,200.00 was due on the first day of each month. The Tenant paid the Landlord a security deposit of \$600.00 and a pet damage deposit of \$600.00.

The relationship between the co-tenants ended and the Tenants signed a mutual agreement to end the tenancy with the Landlord. The Tenant provided a copy of the Mutual Agreement to End a Tenancy. The Agreement states that the Tenants agree to vacate the rental unit on June 1, 2016. The Agreement is signed by the Landlord and both Tenants. The Mutual Agreement to End Tenancy is dated April 21, 2016.

The Tenant C.R. testified that she provided the Landlord with an authorization letter signed by both Tenants on April 19, 2016, for the Landlord to return the security deposit and pet damage deposit directly to her. The Tenant provided a copy of the letter that she recreated from memory.

The Tenant testified that the Landlord did not return the security deposit. The Tenant submitted that on June 15, 2016, the Landlord sent the Tenant a text message stating he will not be returning the full amount of the deposits and he verified the Tenants forwarding address at that time.

The Tenant submitted that the Landlord refused to provide her with evidence of damage done to the rental unit. The Landlord provided the Tenant a breakdown of damage but no evidence of actual damage.

The Tenant provided a copy of a text messages between the parties. A message from the Landlord on states that the Landlord spent 4 hours cleaning the unit before the Tenants moved in and paid for a professional cleaner. The text messages states that it was clear that the unit would require a professional cleaner to come in and clean. The estimate is that it would take at least 8 hours to bring it back to pre-move in inspection.

The breakdown of damage provided to the Tenant includes a professional cleaning charge of 8 hours at \$26.75 per hour.

The Tenant submitted that she never agreed that the Landlord could keep any amount of the security deposit. The Tenant received \$408.31 from the Landlord on June 22, 2016.

The Landlord testified that on April 21, 2016, he did receive a letter from the Tenants that states the Tenant Y.P. agrees that the Landlord can return the security deposit and pet damage deposit directly to Tenant C.R.

The Landlord testified that on June 1, 2016, the Tenant Y.P. signed away \$791.69 from the deposits during a move out inspection.

The Landlord testified that Y.P. remained in the rental unit after the tenancy ended on June 1, 2016. The Landlord testified that Y.P. was required to pay the Landlord a security deposit in the amount of \$600.00. The Landlord testified that Y.P. only paid him \$400.00 of the required \$600.00.

The Landlord testified that Y.P. vacated the rental unit in October 2016.

Analysis

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off states

The landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an application for dispute resolution claiming against the deposit.

If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

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

I find that the Landlord failed to return the security deposit and pet damage deposit within 15 days of receiving the Tenant's forwarding address. The Landlord has not provided sufficient evidence to support his testimony that the Tenant Y.P. agreed that the Landlord could keep a portion of the deposits.

When the Landlord received the Tenant's forwarding address, the Landlord was required to repay the entire deposits within 15 days, or file for dispute resolution.

I find that the Landlord knew the forwarding address of the Tenant as confirmed in the text messages dated June 15, 2016. As there was no evidence submitted to establish the exact date when the Landlord received the Tenant's forwarding address, I find that the Landlord was obligated to repay the deposits within 15 days of June 15, 2016.

The Landlord did not apply for dispute resolution to keep the deposits, and there was no agreement from the Tenant C.R. that the Landlord could keep the deposits.

The Tenant received \$408.31 from the Landlord on June 22, 2016.

Pursuant to section 38 (6) of the Act, the Landlord must pay the Tenant double the amount of the security deposit and pet damage deposit. Since the Landlord returned \$408.31 within 15 days, the remaining amount of \$791.69 is doubled. I award the Tenant \$1, 583.38.

I grant the Tenant a monetary order in the amount of \$1,583.38. 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 Tenant within 15 days of receiving the Tenant's forwarding address, and provided insufficient evidence that he is entitled to keep a portion of the deposits.

The Tenant is awarded a monetary order in the amount of \$1,583.38.

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: January 18, 2017

Residential Tenancy Branch