



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNR FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for unpaid rent and/or utilities pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call.

The landlord did not attend this hearing, although I waited until 1:49 p.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 1:30 p.m. The tenants attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

The landlord's application is dismissed in its entirety without leave to reapply as the landlord failed to attend the hearing and present evidence in support of the application.

Issues

Are the tenants entitled to a return of all or a portion of the security deposit?

Background and Evidence

The tenancy began on September 1, 2016 with a monthly rent of \$1500.00 payable on the 1st day of each month. The tenants paid a security deposit of \$750.00 and pet deposit of \$750.00 at the start of the tenancy which the landlord continues to hold. The tenancy ended on October 1, 2016.

The tenants submit they provided the landlord with a forwarding address by text message upon request by the landlord so she could return the tenants deposit.

The landlord filed an application to retain the security deposit on October 5, 2016.

Analysis

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution.

Although the landlord made an application to retain the deposit, the landlord failed to follow through on that application by attending the hearing and presenting evidence in support of the application. The landlord's application is dismissed without leave to reapply.

The tenants are entitled to the return of the security deposit and pet deposit and awarded an amount of **\$1,500.00**, which is the amount of the original security deposit and pet deposit.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenants a Monetary Order in the amount of \$1500.00. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: February 27, 2017

Residential Tenancy Branch

