



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 concerning an application made by the tenants for a monetary order for return of all or part of the pet damage deposit or security deposit and to recover the filing fee from the landlord for the cost of the application.

The landlord and one of the tenants attended the hearing, and the tenant also represented the other named tenant. The parties each gave affirmed testimony and were given the opportunity to question each other. The parties agreed that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Have the tenants established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit?

Background and Evidence

The tenant testified that this fixed term tenancy began on March 1, 2015 and expired on February 28, 2016 thereafter reverting to a month-to-month tenancy, which ultimately ended on May 31, 2016. Rent in the amount of \$900.00 was due on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$450.00 which deposited by the landlord into his account on March 19, 2015. No move-in or move-out condition inspection reports were completed. The rental unit is a suite within a 4-plex, and all suites were tenanted. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord has returned \$330.00 of the security deposit; the cheque is dated June 13, 2016. The tenants provided a forwarding address to the landlord on December 22, 2016 in a letter requesting the balance of \$120.00 by registered mail. Copies of the

letter and the Canada Post cash register receipt have been provided as evidence by the tenants. The tenants did not authorize the landlord to keep any portion of the security deposit and the landlord has not served the tenants with an application for dispute resolution claiming against the security deposit.

The tenants claim double the amount of the security deposit, less the amount returned by the landlord, and recovery of the \$100.00 filing fee.

The landlord testified that he was working so much he missed deadlines and returned \$330.00.

Cleaning after the tenancy ended cost the landlord \$120.00 and the tenants claimed it was dirty when they moved in, but the landlord doesn't think it was. Photographs have been provided which the landlord testified were taken the day the tenants returned the keys.

Although the rental unit was rented right away, the landlord lost a month of rental revenue, and didn't make an application for dispute resolution believing it was too late to do so.

Analysis

The *Residential Tenancy Act* states that a landlord must return a security deposit or pet damage deposit to a tenant in full 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 the tenant double the amount.

Also, a landlord's right to make a claim against a security deposit or pet damage deposit for damages is extinguished if the landlord fails to ensure that move-in and move-out condition inspection reports are completed in accordance with the regulations. Therefore, even if there were damages, the landlord had no right to make a claim against the security deposit for cleaning because the landlord didn't ensure the reports were completed.

I accept the undisputed testimony of the tenant that the tenancy ended on May 31, 2016. On June 13, 2016 the landlord returned a portion of the security deposit, retaining \$120.00 without the tenants' written consent. The tenants provided a forwarding address in writing on December 22, 2016 and the landlord has not returned the balance and has not made an application for dispute resolution claiming against it.

I refer to Residential Tenancy Policy Guideline #17 – Security Deposit and Set-Off, which states, in part:

3. The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:
 - Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.
The arbitrator doubles the amount paid as a security deposit ($\$400 \times 2 = \800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is \$525.00 ($\$800 - \$275 = \525).

Using the same calculation, I find that the tenants are entitled to double the amount of the security deposit, less the portion repaid by the landlord and recovery of the \$100.00 filing fee, for a total of \$670.00 ($\$450.00 \times 2 = \$900.00 - \$330.00 = \$570.00 + \$100.00 = \670.00).

Conclusion

For the reasons set out above I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$670.00.

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: March 17, 2017

Residential Tenancy Branch