



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing was convened as a result of the tenants' Application for Dispute Resolution (the "Application") under the *Residential Tenancy Act* (the "*Act*"). The tenants applied for a monetary order for money owed or compensation for damage or loss under the *Act*, namely double the return of the security deposit and pet damage deposit, plus recovery of the cost of the filing fee.

The male tenant (the "tenant") and the landlords attended the teleconference hearing and provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions during the hearing. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

Neither party raised any concerns regarding the service of documentary evidence.

Issue to be Decided

- Are the tenants entitled to the return of double their security deposit under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on December 1, 2012 and reverted to a month to month tenancy after December 1, 2013. The parties agreed that the tenancy ended on October 1, 2016 when the tenants vacated the rental unit. At the start of the tenancy the tenants paid an \$875.00 security deposit and an \$875.00 pet damage deposit to the landlords.

The parties agreed that the tenants provided their written forwarding address to the landlords on the outgoing condition inspection report dated October 1, 2016. The parties also agreed that the tenants did not give the landlords permission to retain a specific amount from their security deposit, although the tenant did testify that on the condition inspection report the tenants did confirm that ~~carpet~~ cleaning would be deducted from their security deposit and in November 2016, when the parties met, the tenant agreed to a \$150.00 deduction from the security deposit for the ~~carpet~~ cleaning indicated on the outgoing condition inspection report.

The landlords affirmed that they have not filed an Application to claim against the tenants' security deposit or pet damage deposit. The landlords testified that they mailed a cheque in the amount of \$1,350.00 to the tenants by regular mail to the forwarding address of the tenants. The landlords stated that they did not submit a copy of the cheque in evidence, did not mail the cheque via registered mail, or submit a copy of the stamped envelope in support that a cheque was mailed to the tenants. The landlords allege that the tenants failed to fully provide their written forwarding address as they were missing "basement suite" from their written forwarding address. The tenant stated that they never received a cheque from the landlords but have received other mail and spoke to the people living upstairs who confirmed that no envelope was received that had not been provided already to the tenants. The landlords state that the cheque was dated October 13, 2016 which would make the cheque stale-dated after six months and as a result, would no longer be able to be cashed.

The parties agreed that on November 20, 2016 the parties met as the tenants had applied for this dispute resolution hearing on November 1, 2016. The tenant stated that at that meeting he agreed to the ~~carpet~~ cleaning deduction of \$150.00 as per the condition inspection report, and the landlords returned the remaining \$1,600.00 in combined deposits which tenant confirms having received on November 20, 2016.

Analysis

Based on the above, the evidence of the parties, and on a balance of probabilities, I find the following.

Tenants' claim for the return of double the security deposit and pet damage deposit – I find the landlords have provided insufficient evidence to support that a cheque in the amount of \$1,350.00 was ever mailed to the tenants. I note that the landlords decided not to use registered mail, did not keep a copy of the alleged cheque, and did not have a copy of the stamped envelope that they claim to have mailed to the tenants. The tenants deny that any cheque was ever received from the landlords. There

is no dispute that the tenant agreed to a deduction of \$150.00 for ~~carpet~~ carpet cleaning and that ~~carpet~~ carpet cleaning was agreed to in writing on the condition inspection report.

Furthermore, the landlords confirmed they did not apply for dispute resolution to claim towards any portion of the tenants' security deposit or pet damage deposit within 15 days of October 1, 2016, which is the same date as the end of tenancy and the date the written forwarding address was provided by the tenants to the landlords.

The security deposit is held in trust for the tenants by the landlords. At no time do the landlords have the ability to simply keep the security deposit or pet damage deposit because they feel they are entitled to it or are justified to keep it. The landlords may only keep all or a portion of the security deposit and pet damage deposit through the authority of the *Act*, such as an order from an arbitrator, or the written agreement of the tenants. In the matter before me, I find the landlords did not have any authority under the *Act* to keep any portion of the security deposit or pet damage deposit and did not return the full security deposit to the tenants within 15 days in accordance with the *Act*. Section 38 of the *Act* applies which states:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

[My emphasis added]

In the matter before me, I find that the landlords breached section 38 of the *Act* by failing to return the tenants' security deposit and pet damage deposit in full to the tenants within 15 days of October 1, 2016 having not made a claim towards the security deposit and pet damage deposit, and by not having the written permission of the tenants to retain any portion of the security deposit.

I have considered; however, that the tenants did agree to the cost of ~~carpet~~ cleaning and the tenant testified that he knew there would be a cost but was just not sure about the exact cost for the ~~carpet~~ cleaning so confirmed he knew there would be a deduction to account for the ~~carpet~~ cleaning he agreed to in the outgoing condition inspection report.

Given the above, I find the tenants are entitled to the return of double the original pet damage deposit of \$875.00 and I deduct \$150.00 from the \$875.00 security deposit for ~~carpet~~ cleaning which the tenant confirmed he agreed to; the remainder of the security deposit balance of \$725.00 doubles for a total doubled amount of \$3,200.00. From the \$3,200.00 amount I also deduct the \$1,600.00 amount that the tenant confirmed having received from the landlords on November 20, 2016, which leaves a balance owing by the landlords to the tenants in the amount of **\$1,600.00**.

As the tenants Application has merit, I grant the tenants the recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the *Act*.

Monetary Order – I find that the tenants have established a total monetary claim in the amount of **\$1,700.00** as described above. Therefore, I grant the tenants a monetary order pursuant to section 67 of the *Act* for the balance owing by the landlords to the tenants in the amount of \$1,700.00

I caution the landlords to comply with section 38 of the *Act* in the future.

Conclusion

The tenants' application has merit.

The tenants have established a total monetary claim in the amount of \$1,700.00, as described above. The tenants have been granted a monetary order pursuant to section 67 of the *Act* for the balance owing by the landlords to the tenants in the amount of \$1,700.00. This order must be served on the landlords and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The landlords have been cautioned to comply with section 38 of the *Act* in the future.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: May 3, 2017

Date corrected: May 12, 2017

Residential Tenancy Branch