



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

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

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package and the submitted documentary evidence. As both parties have attended and confirmed receipt of the submitted documentary evidence, I am satisfied that both parties have been sufficiently served as per section 90 of the Act.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for return of all or part of the security deposit and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on October 15, 2016 on a fixed term tenancy ending on October 14, 2017 and then ended on April 30, 2018. The monthly rent was \$775.00 payable on the

1st day of each month. A security deposit of \$387.50 and a pet damage deposit of \$387.50 were paid on October 15, 2016.

The tenants seek a clarified monetary claim of \$488.40 which consists of the withheld portion by the landlord and recovery of the \$100.00 filing fee. The tenant claims that the landlord has withheld this amount without their consent or without the authorization of the landlord. The tenants clarified that the landlord withheld this amount over a dispute for cleaning and damages claimed by the landlord.

The landlord provided undisputed affirmed testimony that the tenants forwarding address in writing for return of the security and pet damage deposits on or before April 30, 2018. The landlord confirmed in his direct testimony that he did not have permission by the tenant or authorization from the Residential Tenancy Branch to retain all or a portion of the deposits.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

In this case, I accept the undisputed evidence of both parties and find that the landlord withheld the \$387.50 security and the \$387.50 pet damage deposits without consent of the tenants nor did he file an application to dispute returning it in dispute over compensation for cleaning and damages claimed by the landlord. Both parties confirmed that the landlord withheld a sum of \$388.40 in dispute. I order that the landlord return this \$388.40 to the tenant.

Pursuant to section 38(6) of the Act, the landlord having failed to return the entire \$775.00 combined security and pet damage deposits or file an application in dispute of return it is liable to pay an amount equal to those amounts. The tenants are entitled to \$775.00.

The tenants have established a total monetary claim of \$1,163.40. The tenants having been successful are also entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenants are granted a monetary order for \$1,263.40.

This order must be served upon the landlord. Should the landlord fail to comply with the order, the 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: November 27, 2018

Residential Tenancy Branch