



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on November 3, 2015. The Tenant filed seeking an order to cancel a 2 Month Notice to end tenancy for landlord's use and to recover the cost of his filing fee from the Landlord.

The hearing was conducted via teleconference and was attended by two Landlords and the Tenant. The application for Dispute Resolution listed only one Landlord; however, two Landlords appeared and gave affirmed testimony. Therefore, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa, except where the context indicates otherwise

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

The Tenant submitted a copy of the 2 Month Notice into evidence at the time he filed his application for Dispute Resolution. No other documentary evidence was received on file from either party, prior to this hearing.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Have the parties agreed to settle these matters?

Background and Evidence

The Tenant began to occupy the property in May 2013 based on a verbal tenancy agreement that he had entered into with the previous owners of the property. Rent is

payable on the first of each month in the amount of \$680.00 and in May 2013 the Tenant paid \$325.00 as the security deposit.

The current Landlords purchased the house in July 2015 and the Tenant continued to occupy the basement suite. The Landlords moved in and began to occupy the upper two levels of the house.

During the course of this proceeding the parties agreed to settle these matters.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

During the hearing, the parties discussed the issues between them, engaged in a conversation and achieved a resolution of their dispute on the following terms:

- 1) The Tenant agreed to withdraw their application for Dispute Resolution;
- 2) The Tenant agreed to vacate the rental property no later than January 31, 2016 at 1:00 p.m.;
- 3) The Landlords agreed to pay the Tenant \$680.00 cash on January 31, 2016 as compensation equal to one month's rent for serving the Tenant the 2 Month Notice;
- 4) The Tenant agreed that he would sign both receipts for the \$680.00 cash leaving one for the Landlords' records and one receipt for the Tenant's record;
- 5) The parties agreed that the \$325.00 security deposit would be disbursed in accordance with section 38 of the *Act* which has been copied at the end of this Decision.

The parties agreed to settle these matters; therefore, I declined to award recovery of the filing fee.

Conclusion

The parties agreed to settle these matters, pursuant to section 63 of the *Act*.

In support of the settlement agreement, The Tenant has been issued a Monetary Order for **\$680.00**. This Order is legally binding and must be served upon the Landlords in the event the Landlords do not comply with the settlement agreement. This Order may be filed with Small Claims Court and enforced as an Order of that Court.

The Landlord has been issued an Order of Possession effective **January 31, 2016 at 1:00 p.m.** In the event that the Tenant does not comply with the settlement agreement

this Order must be served upon him and may be filed with Supreme 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: January 07, 2016

Residential Tenancy Act

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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].

(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.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [*service of documents*] or give the deposit personally to the tenant.

