



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary order for the return of double his security and pet damage deposits in the amount of \$2,250.00, and to recover the \$100.00 cost of their Application filing fee.

The Tenant and the Landlord, B.S., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"). However, only the evidence relevant to the issues and findings in this matter are described in this decision. At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the decision would be emailed to both Parties.

Issue(s) to be Decided

- Is the Tenant entitled to the return of his security and pet damage deposits, and if

so, in what amount?

- Is the Tenant entitled to recovery of the \$100.00 filing fee for this Application?

Background and Evidence

The Parties agreed that the periodic tenancy began on December 2, 2017, with a monthly rent of \$1,500.00, due on the first day of each month. The Parties agreed that the Tenant paid a security deposit of \$750.00 and a pet damage deposit of \$375.00. The Tenant also said he paid first and last month's rent at the beginning of the tenancy.

The Parties agreed that the Tenant provided his forwarding address to the Landlords on January 1, 2019, via email. The Tenant provided a copy of the email chain between the Parties in which he provided his email address on January 1, 2019.

The Landlord submitted a photograph of an envelope addressed to the Tenant that she said contained a cheque with the amount of the deposits. However, the envelope had a "return to sender" sticker over the address, which says that insufficient postage was used. The Landlord said she had used tape to affix the stamp, because it was not sticky and that this must have caused the system to reject it as having insufficient postage.

It is not clear from the markings on the envelope when this was mailed. Further, the Tenant noted that the Landlord did not provide a photo of the envelope contents to show that it contained the cheque. The sticker on the envelope directs the sender to peel off the label, affix the correct postage and re-mail it. However, the Landlord said she sent the Tenant the deposit money by emailing him an e-transfer; she provided a typed printout showing that on February 11, 2019, she e-transferred \$1,021.50 and on February 12, 2019, she e-transferred \$108.50 for a total of \$1,130.00 or five dollars more than the combined deposits the Tenant had paid to the Landlords.

The Tenant said he did not accept the money transfer, because he thought it would be seen as settling the matter, which he was not prepared to do at that point.

The Parties agreed that they inspected the condition of the rental unit at the start and at the end of the tenancy. The Landlord said that the Tenant was a good tenant and took care of the rental unit. She said the only reason she did not give him the deposits back during the move-out condition inspection was because there was a bed remaining that had to be removed. The Landlord said she thought she could deduct the cost of removing the bed from the security deposit, but that she consulted the RTB and was told that she could not do this. The Landlord submitted a receipt dated January 6, 2019,

showing the payment of \$108.50 to have the bed removed from the rental unit.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Section 38(1) of the Act addresses a landlord's obligation regarding the return of a tenant's security and pet damage deposits:

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.

I find that the Tenant provided his forwarding address to the Landlords on January 1, 2019, and that the tenancy ended on December 31, 2019. The Landlord was required to return the \$1,125.00 of deposits to the Tenant within fifteen days of January 1, 2019, namely by January 16, 2019, or apply for dispute resolution to claim against the deposits.

I find that the Landlords have not provided sufficient evidence to establish that they returned the deposits owing to the Tenant in accordance with the Act or applied to claim against the deposits. I, therefore, find the Landlords failed to comply with their obligations under Section 38(1) of the Act.

Section 38(6)(b) of the Act states that if a landlord does not comply with subsection (1), the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Since the Landlords failed to comply with the requirements set forth in Section 38(1), I

find the Landlord must pay the Tenant double the amount of the deposits. There is no interest payable on the deposits. I award the Tenant with double the amount of the security and pet damage deposits for a total of **\$2,250.00**. Further, since the Tenant was successful in his Application, I award him with recovery of the **\$100.00** filing fee for the Application.

Conclusion

The Landlords failed to return the Tenant's security and pet damage deposits within 15 days of receiving his forwarding address. Therefore, the Tenant's claim for recovery of double the security deposit is successful in the amount of \$2,250.00. The Tenant is awarded recovery of the \$100.00 filing fee for this Application from the Landlord.

I grant the Tenant a monetary order under section 67 of the Act from the Landlord in the amount of **\$2,350.00**.

This order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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: June 04, 2019

Residential Tenancy Branch