



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, FFT

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. A monetary order in the sum of \$1682 for double the security deposit.
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord resides on or about July 5, 2019. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to the return of double the security deposit/pet deposit?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a written tenancy agreement that provided that the tenancy would start on May 1, 2016 and end on May 1, 2019. The rent was \$1350 per month payable in advance on first day of each month. The tenant(s) paid a security deposit of \$1350 at the start of the tenancy.

The tenancy ended at the end of April 2019.

The tenant(s) provided the landlord with his/her their forwarding address in writing on May 30, 2019.

The landlord returned \$1018 of the security deposit on June 7, 2019 leaving a balance of \$332.

The landlord failed to provide the Tenant with a Condition Inspection Report at the start and at the end of the tenancy.

The landlord filed a monetary claim against the Tenant on September 9, 2019. That matter is set for hearing in early January 2020.

Law

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants, the landlord's right to the security deposit has been extinguished or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

Policy Guideline 17 includes the following:

SECURITY DEPOSIT

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7. The right of a landlord to obtain the tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if9:

- the landlord does not offer the tenant at least two opportunities for inspection as required¹⁰ (the landlord must use Notice of Final Opportunity to Schedule a Condition Inspection (form RTB-22) to propose a second opportunity); and/or
- **having made an inspection does not complete the condition inspection report, in the form required by the Regulation, or provide the tenant with a copy of it. (my emphasis)**

C. RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH DISPUTE RESOLUTION

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3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, **the arbitrator will order the return of double the deposit (my emphasis):**

- if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;
- **if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act (my emphasis);**
- if the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the dispute resolution process;
- if the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;
- **whether or not the landlord may have a valid monetary claim.**

Analysis

The tenant paid a security deposit of \$1350 on or about May 1, 2016. I determined the tenancy ended on May 1, 2019. I further determined the tenants provided the landlord with her forwarding address in writing on May 30, 2019. The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenants. The landlord's right to keep the security deposit was extinguished because the landlord failed to provide the tenant with a Condition Inspection before and after the tenancy. As a result I determined the tenants have established a claim against the landlord for double the security deposit \$2700 minus the \$1018 that has been returned for a total of \$1682 ($\$1350 \times 2 = \$2700 - \$1018 = \1682).

The landlord retains the right to claim against the Tenant for any damages that may have occurred. The landlord filed that claim in September and it is scheduled for hearing in early January 2020.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$1682 plus the sum of \$100 in respect of the filing fee for a total of \$1782.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

Conclusion:

In conclusion I ordered the landlord to pay to the tenant the sum of \$1782.

This decision is final and binding on both parties.

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: October 04, 2019

Residential Tenancy Branch