



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNSD

Introduction

This hearing was convened by way of conference call concerning an amended application made by the tenant seeking a monetary order for return of the security deposit or pet damage deposit and to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing and the tenant was accompanied by a person to assist with translation.

At the commencement of the hearing the landlord advised that he provided evidentiary material mail to the tenant by registered on September 15, 2019 at the address contained in the Tenant's Application for Dispute Resolution, prior to receiving the tenant's Amendment. The landlord received the Amendment which amended the tenant's address on October 3 or 4, 2019. However, the amendment to the tenant's application contains an address for service of the rental unit, and the tenant no longer resided at the rental unit. The tenant has not received the landlord's evidence, but I am satisfied that the landlord has served the evidence in accordance with the *Residential Tenancy Act* and Rules of Procedure.

Issue(s) to be Decided

Has the tenant established a monetary claim as against the landlord for return of the security deposit?

Background and Evidence

The tenant gave the following affirmed testimony:

- the tenancy began on November 1, 2018 and the tenancy ended on June 23, 2019;

- rent in the amount of \$1,900.00 was payable on the 1st day of each month and there are no rental arrears;
- the tenant paid a security deposit to the landlord in the amount of \$2,250.00 prior to the commencement of the tenancy;
- the landlord promised to return the security deposit by e-transfer within 30 days after the tenant moved out;
- the landlord has not returned any portion of the deposits and the tenant did not agree in writing that the landlord retain any portion of the deposits;
- no move-in or move-out condition inspection reports were completed.

A copy of the tenancy agreement has been provided for this hearing showing that the \$2,250.00 security deposit consisted of:

- \$950.00 for "½ rental deposit;"
- \$950.00 "furniture deposit;"
- \$200.00 "move-in fee;" and
- \$150.00 "fob fee."

The tenant has not provided the landlord with a forwarding address in writing.

The landlord was not affirmed, but advised that there was no opportunity to complete move-in or move-out condition inspection reports. The tenancy ended on July 29, 2019.

The landlord also agreed that he has not received a forwarding address in writing from the tenant.

Analysis

Firstly, the *Residential Tenancy Act* and regulations specify what deposits and refundable and non-refundable fees a landlord may charge:

Residential Tenancy Act:

Limits on amount of deposits

19 (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.

(2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

Landlord prohibitions respecting deposits

20 A landlord must not do any of the following:

- (a) require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement;
- (b) require or accept more than one security deposit in respect of a tenancy agreement;
- (c) require a pet damage deposit at any time other than
 - (i) when the landlord and tenant enter into the tenancy agreement, or
 - (ii) if the tenant acquires a pet during the term of a tenancy agreement, when the landlord agrees that the tenant may keep the pet on the residential property;
- (d) require or accept more than one pet damage deposit in respect of a tenancy agreement, irrespective of the number of pets the landlord agrees the tenant may keep on the residential property;
- (e) require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement.

Residential Tenancy Regulation:

Refundable fees charged by landlord

6 (1) If a landlord provides a tenant with a key or other access device, the landlord may charge a fee that is

- (a) refundable upon return of the key or access device, and
- (b) no greater than the direct cost of replacing the key or access device.

(2) A landlord must not charge a fee described in subsection (1) if the key or access device is the tenant's sole means of access to the residential property.

Non-refundable fees charged by landlord

7 (1) A landlord may charge any of the following non-refundable fees:

- (a) direct cost of replacing keys or other access devices;
- (b) direct cost of additional keys or other access devices requested by the tenant;
- (c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;
- (d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;
- (e) subject to subsection (2), a fee that does not exceed the greater of \$15 and 3% of the monthly rent for the tenant moving between rental units within the residential property, if the tenant requested the move;
- (f) a move-in or move-out fee charged by a strata corporation to the landlord;
- (g) a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

The *Residential Tenancy Act* states that a landlord has 15 days from the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the deposit(s) in full or apply for dispute resolution claiming against the deposit(s). If the landlord fails to do either the landlord must repay the tenant double the amounts. However, the *Act* also places the onus on the landlord to ensure that move-in and move-out condition inspection reports are completed in accordance with the regulations. Where a landlord fails to do so, the landlord's right to make a claim against the deposit(s) for damages is extinguished. The parties agree that no reports were made at the beginning or end of the tenancy. Therefore, I find that the landlord's right to make a claim against the deposits for damages is extinguished.

The *Act* also puts the onus on the tenant to ensure that the landlord receives a forwarding address in writing, and if the tenant doesn't do so within a year after the tenancy ends the landlord does not have to return the deposits. The parties agree that the tenant has not provided the landlord with a forwarding address in writing. The landlord provided an

address for service to the tenant during the hearing. The tenant still has until one year after the tenancy ended to provide the landlord with a forwarding address in writing, and I dismiss the tenant's application with leave to reapply.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed with leave to reapply.

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: December 17, 2019

Residential Tenancy Branch