



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT MNSD FFT

Introduction

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

- the return of the security deposit pursuant to section 38 of the *Act*;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67 of the *Act*; and
- recovery of the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the tenant's Notice of Dispute Resolution Proceeding package and evidence. The tenant confirmed receipt of the landlord's evidence.

Based on the undisputed testimonies of the parties, I find that the documents for this hearing were served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit, and if so, is the tenant entitled to a monetary award for compensation for the landlord's failure to address the security deposit in accordance with the *Act*?

Is the tenant entitled to a monetary award for compensation for damage or loss as a result of the landlord's failure to comply with the *Act*, regulations or tenancy agreement?

Is the tenant entitled to recover the cost of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into documentary evidence. The written tenancy agreement includes two named tenants to the tenancy agreement - the tenant and a co-tenant referred to as tenant

C.R.D. This fixed-term tenancy began March 1, 2018, with a scheduled end date of February 28, 2019. At that time, the tenancy converted to continue as a month-to-month tenancy. Monthly rent of \$1,000.00 was payable on the first of the month. The landlords confirmed that they received a \$500.00 security deposit and a \$500.00 pet damage deposit, from the two tenants combined, at the start of the tenancy, with note that \$250.00 of each of these deposits was a transfer from deposits paid by the tenant from her prior tenancy agreement with the landlords that began in 2017. There was no written condition inspection report provided to the tenants at the beginning of the tenancy.

The tenant testified that on March 23, 2019, tenant C.R.D. was forcibly removed from the rental unit. The tenant continued to reside in the rental unit. The tenant gave notice to end her tenancy to the landlord by text message on April 16, 2019. The tenant vacated the rental unit and returned her keys on May 26, 2019.

The tenant testified that she agreed to allow the landlords to retain \$30.00 of the security deposit for payment of dump fees.

On July 4, 2019, the tenant provided her forwarding address through text message to the landlords.

The tenant testified that the landlords have not returned the remainder of her deposits.

The landlords testified that the tenant caused damage to the rental unit and they incurred costs for removal of garbage from the rental unit, in addition to the dump fees. The landlords testified that the tenant verbally agreed to relinquish her deposits to the landlords as compensation for the damages and costs incurred by the landlords.

The landlords submitted into documentary evidence a letter dated October 11, 2019 from the tenant C.R.D. providing his authorization in writing for the landlords to retain \$250.00 of the security deposit and \$250.00 of the pet damage deposit to cover damages.

The tenant is seeking to recover rent paid from May 27, 2019 to May 31, 2019 in the amount of \$161.00 as she testified that she felt "forced" to move out early. The tenant is also seeking the return of the \$500.00 security deposit and \$500.00 pet damage deposit, less the \$30.00 for dump fees. The tenant withdrew her additional claim of \$50.00 for overpayment of rent.

The landlords have not filed an Application for Dispute Resolution to claim against the security or pet damage deposit or for compensation for damages.

Analysis

Based on the testimony and evidence presented, on a balance of probabilities, I make the following findings on the tenant's two heads of claim, addressed separately below.

- 1) Recovery of rent paid from May 27 to 31, 2019

Section 67 of the *Act* provides that, in cases where an arbitrator has found that damages or loss results from a party not complying with the *Act*, regulations, or tenancy agreement, an arbitrator may determine the amount of that damage or loss and order compensation to the claimant.

Section 16 of the *Residential Tenancy Policy Guideline* examines the issues of compensation in detail, and explains as follows:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- *a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;*
- *loss or damage has resulted from this non-compliance;*
- *the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and*
- *the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.*

Where the claiming party has not met each of the above-noted four elements, the burden of proof has not been met and the claim fails.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their version of events.

As the onus for proving a claim for damages is on the party seeking compensation, in this matter, the tenant must prove their claim on a balance of probabilities.

I have applied the above-noted test to the claim for compensation put forward by the tenant to recover rent paid from May 27 to May 31, 2019.

Pursuant to section 45 of the *Act* a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Based on the written tenancy agreement submitted into evidence, I find that at the time the tenant ended the tenancy, the tenancy operated on a monthly basis, and therefore, as required by section 45 of the *Act*, the notice could not take effect earlier than one month from the date the notice was given to the landlord. Further, I find that rent was payable on the first day of the month, and as such the notice could not take effect earlier than the 31st day of May. As such, to meet the requirements of section 45 of the *Act*, I find that the earliest date the tenant was able to end the tenancy was May 31, 2019 as that was the day before the day in the month that rent was payable under the tenancy agreement and was not earlier than one month after the date the landlord received notice to end tenancy. Therefore, I find that the tenant

was obligated to pay rent until May 31, 2019. Although the tenant provided verbal testimony that she was “forced” by the landlords to move out early on May 26, 2019, I find that the tenant has failed to present sufficient evidence to support this claim.

As such, the tenant’s claim to recover rent fails and is dismissed without leave to reapply.

2) Return of the security and pet damage deposits

The *Act* contains comprehensive provisions for addressing security and/or pet damage deposits at the end of the tenancy. Both the landlord and the tenant have responsibilities under section 38 of the *Act*.

Section 38(1) of the *Act* requires that if the parties cannot agree on the disposition of the deposits, the landlord must either return the tenant’s security deposit in full or file for dispute resolution for authorization to retain the deposit 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**

[My emphasis added]

Although the landlords referred to a written authorization provided by tenant C.R.D. allowing the landlords to retain \$250.00 of the security deposit and \$250.00 of the pet damage deposit, I find that this authorization was dated October 11, 2019, which is after the date the tenant filed her Application for Dispute Resolution for the return of the deposits on September 8, 2019. Therefore, I find that the tenant’s claim pre-dates and therefore nullifies tenant C.R.D.’s rights to authorize the landlords to retain those portions of the security and pet damage deposits.

Where a tenant seeks the return of the security/and or pet damage deposit, the tenant bears the burden to prove when and how a written forwarding address was given to the landlord since a landlord is not required to take action with respect to the deposits unless a written forwarding address is received from the tenant, in accordance with section 38 of the *Act*.

In this matter, the tenant provided her forwarding address through text message to the landlords, which is not considered “in writing” and is not a permitted method of service as set out under section 88 of the *Act*, provided below:

- 88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this *Act* to be given to or served on a person must be given or served in one of the following ways:
- (a) by leaving a copy with the person;
 - (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
 - (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
 - (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
 - (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;

- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service prescribed in the regulations.

However, the tenant's Application for Dispute Resolution, which forms part of the Notice of Dispute Resolution Proceeding for this hearing, contains a written "Address for Service of Documents" for the tenant. In the hearing, the tenant confirmed that the "Address for Service" provided on the Application for Dispute Resolution was a valid address. The landlords confirmed receipt of the tenant's Application for Dispute Resolution for this hearing, and that it contained the tenant's Address for Service. For the clarity of both parties, I have noted the tenant's Address for Service, as it appears on the tenant's Application for Dispute Resolution, on the cover sheet of this Decision. The tenant is directed to provide any corrections to the noted Address for Service to the landlords immediately.

Pursuant to Residential Tenancy Branch Practice Directive 2015-01, I deem that the landlords are now in receipt of a written forwarding address for the tenant as provided in the tenant's Application for Dispute Resolution for this hearing. This finding triggers the landlords to take one of the following actions under section 38(1) of the *Act* as follows:

- (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.

As such, I find the tenant's Application to recover the security and pet damage deposits is premature and the landlord may still address the tenant's deposits in accordance with the above-noted provisions of section 38 of the *Act*.

To clarify, this means that the landlords have 15 days from the deemed receipt date of this Decision to address the tenant's security and pet damage deposits in accordance with section 38 of the *Act*. The deemed receipt date of this Decision is five days from the date of this Decision. The date of this Decision is noted in the Conclusion section of this Decision. Should the landlord fail to address the security and pet damage deposits within that timeline, the tenant will be at liberty to reapply for dispute resolution to claim double the amount of these deposits pursuant to section 38(6) of the *Act*.

I find that the tenant is not entitled to recover the cost of the filing fee for this Application for Dispute Resolution as she was unsuccessful in obtaining a monetary award from her claims.

Conclusion

The tenant's claim for recovery of rent is dismissed without leave to reapply.

The tenant's claim for the return of the security and pet damage deposits is dismissed with leave to reapply to request the return of double the security and pet damage deposits, should the landlords fail to address the security and pet damage deposits in accordance with 38 of the *Act*, within 15 days of the deemed receipt date of this decision.

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 10, 2020

Residential Tenancy Branch