



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

On June 5, 2020, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") for the Landlord to return of all or part of the pet damage deposit or security deposit, and to recover the filing fee for the Application.

The matter was scheduled as a teleconference hearing. The Tenant and Landlord appeared at the hearing.

The hearing process was explained, and the participants were asked if they had any questions. The Tenant and Landlord provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Tenant entitled to the return of the security deposit and or pet damage deposit?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

The Tenant and Landlord testified that the tenancy began in December 2014 on a month to month basis. Rent in the amount of \$853.00 was due to be paid to the Landlord by the first day of each month. The Tenant vacated the rental unit after

receiving a Four Month Notice to End Tenancy from the Landlord. The Tenant gave written notice to end the tenancy for May 1, 2020. The parties agreed that the Tenant paid a security deposit of \$375.00 to the Landlord.

The parties did not agree on the amount of the pet damage deposit that was paid to the Landlord. The Tenant testified that she paid the Landlord \$750.00; however, the Landlord testified that the Tenant paid \$187.50. The Tenant did not provide any documentary evidence to support her testimony that she paid \$750.00 for a pet damage deposit. The Landlord provided a copy of a bank record showing an Account with the amount of \$582.12 which is the amounts he received from Tenant for the deposits plus interest.

The Tenant testified that the Landlord did not return all of the security deposit and pet damage deposit after the tenancy ended.

The Tenant testified that there was no written agreement that the Landlord could retain any amount of the security deposit or pet damage deposit.

The Tenant testified that she provided the Landlord with her forwarding address in writing on April 21, 2020. The Tenant provided a copy of the letter provided to the Landlord.

The Tenant testified that she received a cheque from the Landlord dated May 15, 2020 in the amount of \$239.98 but she never cashed it.

In reply, the Landlord testified that the Act provides that the Tenant has extinguished her right to the return of the deposit because she failed to participate in a move out inspection. The Landlord testified that he proposed two move out inspections and the Tenant declined the opportunities. The Landlord provided testimony that he did not conduct a move in inspection at the start of the tenancy.

The Landlord testified that the Tenant is responsible for damage and cleaning costs to the rental unit at the end of the tenancy. The Landlord testified that he provided the Tenant with evidence of the damage and cleaning completed and deducted the amounts from the deposits he was holding. The Landlord testified that returned the amount of \$239.98 to the Tenant via cheque sent within 15 days.

In reply, the Tenant provided testimony confirming that she declined to participate in the move out inspection because it was moot as the Landlord already failed to conduct a move in inspection.

Analysis

Section 38 (1) of the Act states that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must repay any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38 (6) of the Act provides 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.

Residential Tenancy Branch Policy Guideline # 17 Security Deposit and Setoff provides the following information:

In cases where both the landlord's right to retain and the tenant's right to the return of the deposit have been extinguished, the party who breached their obligation first will bear the loss.

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

I find that the tenancy ended on May 1, 2020 and the Tenant provided her forwarding address to the Landlord on April 21, 2020. I find that there was no written agreement between the parties that the Landlord could retain an amount from the security deposit or pet damage deposit. I find that the Landlord did not file an application for dispute resolution making a claim against the deposits for damage within 15 days from the end of the tenancy.

While I have considered that the Tenant declined to participate in a move out inspection, I find that the Landlord failed to conduct a move in inspection in accordance with section 23 of the Act. Since the Landlord breached his obligation first, the Landlord has extinguished his right to claim against the security deposit and pet damage deposit.

I find that the Landlord breached section 38 of the Act. Pursuant to section 38(6) of the Act, the Landlord must pay the Tenant double the amount of the security deposit and pet damage deposit.

The Policy Guideline #17 provides an example of how a security deposit may be doubled:

Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held. The arbitrator doubles the amount paid as a security deposit ($\$400 \times 2 = \800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is \$525.00 ($\$800 - \$275 = \525).

I find that the Landlord has provided the better evidence regarding the amount of deposits he received from the Tenant. I accept the Landlord's banking evidence and find that it is more likely than not that the Landlord only received a pet damage deposit of \$187.50 from the Tenant. I find that the Landlord is holding a security deposit of \$375.00 and a pet damage deposit of \$187.50 for a total of \$562.50.

I order the Landlord to pay the Tenant the amount of \$1,125.00.

I order the Tenant to destroy the cheque in the amount of \$239.98 that she previously received from the Landlord.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Tenant was successful with her claim. I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

I grant the Tenant a monetary order in the amount of \$1,225.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Landlord failed to return the security deposit and pet damage deposit to the Tenant in accordance with the legislation.

The Tenant is granted double the amount of the security deposit and pet damage deposit and recovery of the filing fee.

I grant the Tenant a monetary order in the amount of \$1,225.00.

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: August 26, 2020

Residential Tenancy Branch