



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking return of all or part of the pet damage deposit or security deposit. The tenant's application was made by way of the Direct Request process, which was referred to this participatory hearing.

The tenant and one of the named landlords attended the hearing, and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

Both parties have provided evidentiary material outside the timelines, however with the consent of the parties, all evidence provided has been reviewed and is considered in this Decision.

Issues to be Decided

Has the tenant established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit?

Background and Evidence

The tenant testified that this fixed-term tenancy began on May 1, 2019 and was to expire on May 1, 2020, however the tenant moved out of the rental unit on April 1, 2020. Rent in the amount of \$2,600.00 was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$1,300.00 as well as a pet damage deposit in the amount of \$1,300.00. The rental unit is a townhouse, and a copy of the tenancy agreement has been provided for this hearing.

The landlord and the tenant participated in a move-in condition inspection and a report was completed. At the end of the tenancy the landlord did not request a move-out condition inspection, and the tenant created a version. The tenant testified that she left a gas canister for a camping stove in a cupboard in error. Also, the landlord mentioned a sawhorse left at the rental unit, but it belonged to a neighbouring unit.

The tenant provided a forwarding address in writing to the landlord on May 7, 2020 by leaving it at the landlord's door, and a copy has been provided for this hearing. The landlord returned the \$1,300.00 per damage deposit, but only \$400.00 of the security deposit. The landlord has not served the tenant with an Application for Dispute Resolution claiming against the security deposit, and the tenant claims \$1,800.00, being double the amount not returned.

The landlord testified that the rental unit was re-rented for August 1, 2020. The landlord had told the tenant that the landlord was planning to sell, but didn't give a date for the tenant to vacate. The tenant gave notice to end the tenancy and due to COVID-19 it became a buyers' market, so the landlord took it off the market and re-rented. The rental unit was vacant from April 1 to August 1, 2020.

The landlord also testified that he didn't know that he had to file an Application for Dispute Resolution to keep the security deposit. The landlord knew that he had to do a move-out condition inspection report but did not know that both parties had to be there. Due to the pandemic, the landlord didn't go into the rental unit until 9 days after the tenant vacated because the tenant's roommate was in isolation.

The landlord didn't receive a letter from the tenant at his door, however in another claim, the tenant sent the landlord some documents, which contained the tenant's forwarding address, and were received on May 26, 2020.

The landlord kept \$300.00 of the security deposit for liquidated damages and \$600.00 for the cleaning done by the landlord and his wife.

Analysis

The *Residential Tenancy Act* does not permit a landlord to be judge and jury with respect to security deposits or pet damage deposits, but states that a landlord has 15 days to return the deposit(s) in full or to make an Application for Dispute Resolution claiming against the deposit(s). If the landlord fails to do either within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, the landlord must repay double the amount.

In this case, the landlord has returned the entire pet damage deposit, and there are no issues with that. The landlord also returned \$400.00 of the security deposit, but has not made a claim against the balance of \$900.00. The e-transfer of \$1,700.00 was sent on April 9, 2020, and the landlord admitted receiving a forwarding address in writing on May 26, 2020.

I refer to Residential Tenancy Policy Guideline #17 respecting partial returns, which states, in part:

The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:

- 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).

In applying the same, and considering that the tenant did not authorize any deductions, I find that the tenant is entitled to double the security deposit, less the amount returned, or $\$1,300.00 \times 2 = \$2,600.00 - \$400.00 \text{ returned} = \$2,200.00$.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,200.00.

This order is final and binding and may be enforced.

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 15, 2020

Residential Tenancy Branch