



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

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

Both tenants and the landlord attended the hearing, and one of the tenants and the landlord gave affirmed testimony. The parties were given the opportunity to question each other.

The parties have also provided evidentiary material, however the tenant advised that the evidence provided by the landlord was given to the tenants in a link to open in an email, but the descriptions are not the same as uploaded to the Residential Tenancy Branch system so the tenants would not be able to determine which documents are being referred to. The Rules of Procedure specify that: "Regardless of how evidence is accessed during a hearing, the party providing digital evidence must provide each respondent with a copy of the evidence on a memory stick, compact disk or DVD for its permanent files." Since the landlord has not submitted the evidence to the tenant on a memory stick, compact disk or DVD, I decline to consider the landlord's evidence.

No further issues with respect to service or delivery of documents or evidence were raised, and all evidence of the tenants has been reviewed and is considered in this Decision.

Issues to be Decided

Have the tenants 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 reverted to a month-to-month tenancy after October 31, 2019, which ultimately ended on August 30,

2020. Rent in the amount of \$2,250.00 was payable on the 1st day of each month and there are no rental arrears. On April 22, 2019 the landlord collected a security deposit from the tenants in the amount of \$1,125.00, and no pet damage deposit was collected. The rental unit is a condominium apartment, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The tenant further testified that move-in and move-out condition inspection reports were completed by the parties, and copies have been provided for this hearing. The move-out portion shows the move-out date as August 30, 2020. It also shows the tenants' forwarding address written on the report on August 31, 2020. The landlord returned \$220.00 of the security deposit to the tenants, however the tenants did not agree to any deductions.

The landlord has not served the tenants with an Application for Dispute Resolution claiming the security deposit.

The landlord testified that she returned \$220.00 of the security deposit to the tenants on September 15, 2020.

The move-out condition inspection was completed over 2 days; August 30 and August 31, 2020. The landlord had called the maintenance person in the building to assess damages, and he gave an estimate of \$905.00 for repairs and cleaning to present to the tenants. The tenants did not agree and offered \$100.00, so the landlord suggested dispute resolution.

The landlord further testified that she believed this hearing would result in an obtain an opinion from the Residential Tenancy Branch, and it was not necessary for the landlord to file an application.

Analysis

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 a tenant's forwarding address in writing to return a security deposit and pet damage deposit to a tenant in full, or must make an Application for Dispute Resolution claiming against the deposit(s) within that 15 day period. If the landlord fails to do either, the landlord must repay double the amount.

In this case, the tenancy ended on August 30, 2020 and the landlord received the tenants' forwarding address in writing on August 31, 2020. The landlord returned \$220.00 to the tenants but has not made an Application for Dispute Resolution.

In determining the amount that the landlord must be ordered to return to the tenants, I refer to Residential Tenancy Policy Guideline #17 – Security Deposit and Set off – which states, in part:

“5. 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 this case, the parties agree that the security deposit amount was \$1,125.00, and double that amount is \$2,250.00, less the \$220.00 returned by the landlord equals **\$2,030.00**. I find that the tenants has established the sum of \$2,030.00.

Since the tenants have been successful with the application the tenants are also entitled to recovery of the filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$2,130.00**.

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: November 27, 2020

Residential Tenancy Branch