



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 was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order for the return of the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed or undisputed facts: The tenancy under written agreement started on January 1, 2020. Rent of \$1,900.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$950.00 as a security deposit and during the tenancy the Landlord collected \$200.00 as a pet deposit. The Landlord received the Tenant’s forwarding address on August 31, 2020. The Parties did not conduct a mutual inspection with a completed report copied to the Tenant for either move-in or move-out.

The Tenant states that the Landlord asked the Tenants to move out of the unit as the Landlord intended to move into the unit. The Tenant states that the Landlord did not serve the Tenant with a one month notice to end tenancy for landlord's use on the approved Residential Tenancy Branch (the "RTB") form. The Tenant states that it moved out of the unit anyway. The Tenant claims compensation equivalent to one month's rent.

The Landlord states that it did not return the security deposit as the Tenant had sent the Landlord a text on August 23, 2020 relinquishing the deposit. The Landlord confirms that the text has no set amount to be retained by the Landlord and does not say anything about the pet deposit. The Landlord states that the Tenant left damages with repair costs beyond the amount of the security deposit and that since the Tenant had no money the Landlord did not consider making any application to claim against the security deposit. The Landlord states that the Parties communicated by both text and email during the tenancy. The Landlord confirms that it did not ask the Tenant to put its authorization into writing. The Landlord confirms that it did not return any of the security or pet deposit.

The Tenant states that at the time the text was send it was in the context of negotiations for compensation for the last month's rent and was not an agreement for the Landlord to retain the security and pet deposits.

Just before the hearing ended, the Parties were each given final opportunity to make submissions on evidence that was relevant and was not provided during the hearing. Neither Party made any final submissions.

Analysis

Section 51(1) of the Act provides that a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one

month's rent payable under the tenancy agreement. Section 51(e) of the Act provides that in order to be effective, a notice to end a tenancy must be in writing and must, when given by a landlord, be in the approved form. As the Tenant was not given a notice to end tenancy in the approved form, I find that the Tenant did not received an effective notice to end tenancy for landlord's use. The Tenant is therefore not entitled to compensation for having received such a notice from the Landlord.

Section 38(4)(a) of the Act provides that a landlord may retain an amount from a security deposit or a pet damage deposit if, at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant. Generally, a text cannot be considered written authorization. Further, given that the text was not provided to the Landlord at the end of the tenancy but a few days before, did not mention the pet deposit, did not set out a specific amount to be retained, and considering the undisputed evidence that the text was made in the context of negotiating a claim for compensation, I find on a balance of probabilities that the Landlord has not substantiated that the Tenant agreed in writing for the Landlord to retain both the security and pet deposits.

Section 38 of the Act provides 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 the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Based on the undisputed evidence of the Landlord's receipt of the forwarding address and as the Landlord did not return the security or pet deposit or make an application claiming against the security or pet deposit, I find that the Tenant is entitled to return of double the combined pet and security deposit plus zero interest of **\$2,300.00** (\$1,150.00 x 2). As the Tenant's application has met with partial success, I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$2,400.00**. The

Landlord remains at liberty to make an application for damages to the unit, subject to any limitation dates.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$2,400.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the RTB under Section 9.1(1) of the Act.

Dated: December 09, 2020

Residential Tenancy Branch