



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord under the Residential Tenancy Act (the Act), seeking:

- Compensation for damage cause by the Tenant, their guests, or their pets to the unit, site, or property;
- Authorization to withhold the security deposit towards the amounts owed; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by two agents for the Applicant (the Applicant's Agents), the Tenant, and an Agent for the Tenant (the Tenant's Agent), who is also listed as a guarantor in the tenancy agreement. All testimony provided was affirmed. The Tenant's Agent acknowledged receipt of the Notice of Dispute Resolution Proceeding Package from the Applicant, including a copy of the Application and the Notice of Hearing, and the Tenant acknowledged receipt from their Agent. Neither the Tenant nor the Tenant's Agent raised concerns regarding service of the above noted documents. As a result, the hearing proceeded as scheduled. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), I refer only to the relevant and determinative facts, evidence and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses confirmed in the hearing.

Preliminary Matters

At the outset of the hearing I identified that the landlord named in the Application (the Applicant), which is a corporation, was different from the landlord named in the tenancy agreement (the Landlord), which is also a corporation. During the Hearing the Agents for the Landlord stated that the Applicant is a division of the corporation named as the Landlord in the tenancy agreement; However, no documentary evidence was provided for my review in support of this testimony.

During the hearing the Tenant and the Tenant's Agent stated that they were not sure of the legal implications of agreeing that the Applicant was a Landlord under the Act as they are not the landlord named in the tenancy agreement. As a result, they did not agree that the Landlord had been properly named in the Application. They also did not agree to amending the name of the landlord at the hearing.

Policy Guideline 43 states in section A that parties who are named as applicant(s) and respondent(s) on an Application for Dispute Resolution must be correctly named and that if any party is not correctly named, the director's delegate may dismiss the matter with or without leave to reapply.

As the Applicant named as the landlord is not the same as the landlord named in the Tenancy agreement, and in the absence of documentary evidence corroborating the Applicant's Agents' testimony that the Applicant is a division of the corporation named as a landlord in the tenancy agreement, I therefore find that I am not satisfied that the Applicant is a landlord for the purposes of the Act or that the landlord has been properly named in the Application as required by Policy Guideline 43. Pursuant to Policy Guideline 43 and section 59(5) of the Act, I therefore dismiss the Application with leave to reapply. As the Application was dismissed, I decline to grant recovery of the filing fee.

Although I have found above that the Applicant named in the hearing is not properly the landlord as set out in the tenancy agreement, I am satisfied that the Agents for the Applicant are in fact agents for the Landlord named in the tenancy agreement. As a result, I will now turn my mind to the matter of whether the tenant is entitled to the return of any amount of the security deposit withheld by the Landlord pending the outcome of the Application as the Applicant seeking retention of the Tenant's security deposit has been dismissed.

Policy Guideline 17, section C.1 states that the arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions

permitted under the Act, on an application to retain all or part of the security deposit, unless the tenant's right to the return of the deposit has been extinguished under the Act. It also states that the arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

The parties were in agreement during the hearing that move in and move out condition inspections and reports were completed and served on the Tenant as required by the Act and regulations. As a result, I am satisfied that the Tenant has not extinguished their right to the return of the security deposit. In the hearing the parties agreed that the tenancy ended on August 31, 2020, and that the Tenant's forwarding address was provided to the Landlord in writing that same date as part of the move out condition inspection report. As the Application seeking retention of the security deposit was filed by the Applicant on September 2, 2020, I find that it was filed in accordance with section 38(1) of the Act. As a result, I do not find that the doubling provision under section 38(6) of the Act applies.

The parties agreed in the hearing that \$325.20 of the \$625.00 security deposit was returned as required, along with a \$100.00 key FOB deposit, and that \$289.80 was withheld for damage to a dryer pending the outcome of the Application. Although the move out condition inspection report in the documentary evidence before me indicates that the Tenant owes \$288.80 for dryer repairs and is therefore entitled to the return of only \$336.20 of the security deposit, these notations are struck through and initialled. As a result, I find that they were effectively removed from the move out condition inspection report. In the hearing the parties did not agree that there was any agreement, written or otherwise, for the Landlord to retain the portion of the security deposit withheld, and in any event, I find that it would have been illogical of the Landlord's Agent's to have filed the Application seeking retention of the amount withheld if there had been written agreement to do so, as section 48(4)(a) of the Act allows landlords to retain an amount from a security deposit or a pet damage deposit without the need for an Application for Dispute Resolution if at the end of a tenancy, the tenant agrees in writing that the landlord may retain the amount to pay a liability or obligation of the tenant.

As a result of the above, I am satisfied that the Landlord was entitled to retain \$289.90 of the security deposit pending the outcome of the Application, despite the fact that the Landlord was not properly named, but find that they have no other right under the Act to have retained it. As the Application has been dismissed, and I am satisfied that the Tenant provided their forwarding address in writing to the Landlord on August 31, 2020, I therefore order the Landlord as named in the tenancy agreement, to return the

\$289.90 withheld from the Tenants security deposit to them. Pursuant to sections 62(3), 65(c) and 67 of the Act, I therefore grant the Tenant a Monetary order in the amount of \$289.90.

Conclusion

The Application is dismissed with leave to reapply.

Pursuant to section 67 of the Act, I grant the Tenant a Monetary Order in the amount of **\$289.90**. The Tenant is provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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

Dated: December 15, 2020

Residential Tenancy Branch