



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for damage or compensation under the Act for the Tenant of \$1,850.00; and to recover the \$100.00 cost of their Application filing fee.

The Tenant and her advocate, P.L. ("Advocate"), and the Landlords, P.T. and A.D., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlords were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses in the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Before the Parties testified, I advised them that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

At the outset of the hearing, the callers to the teleconference hearing identified themselves. A.D. advised that she is also a Landlord for this tenancy, as her name is on the tenancy agreement; however, she was not identified in the Application. As a result, I amended the Respondents' name in the Application, pursuant to section 64(3)(c) and Rule 4.2.

Issue(s) to be Decided

- Is the Tenant entitled to a monetary order, and if so, in what amount?
- Is the Tenant entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on September 1, 2019, and ran to August 31, 2020, and then operated on a month-to-month basis. They agreed that the Tenant paid the Landlords a monthly rent of \$1,500.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlords a security deposit of \$750.00, and a pet damage deposit of \$250.00.

The Parties agreed that they did not conduct an official condition inspection of the rental unit at the start of the tenancy. They said that there were walk-throughs at the start and end of the tenancy, but that a condition inspection report was not produced in the process.

The Parties agreed that the Tenant gave the Landlord her forwarding address and requested the return of the security and pet damage deposits in a letter dated October 6, 2020. The Parties agreed that the Tenant(s) vacated the rental unit on September 30, 2020. The Landlords indicated that they had notice from the Tenant that she would vacate on August 31, 2020, which she did. However, they agreed that the Tenant's daughter and the daughter's boyfriend remained in the rental unit until September 30, 2020, not vacating until near or at 11:30 p.m. The Landlords noted that this is contrary to the requirement to vacate a rental unit by 1:00 p.m. on the last day of the tenancy.

The Landlords also said that the Tenant(s) left a lot of damage that the Landlords had to repair, as well as cleaning that they had to do, which was more challenging than normal with the Covid requirements for cleaning with bleach.

The Advocate referred to section 38 of the Act and RTB Policy Guideline #17, which he noted says the following at part B, paragraph 10:

10. The landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an application for dispute resolution claiming against the deposit.

The Landlords acknowledged that they had not done any of these things. The Landlords focused on the concerns they had with the notice to end tenancy that the Tenant(s) provided, and the damage that was done to the rental unit, as well as their concerns about how the Parties communicated during the tenancy.

The Tenant said that she told the Landlords that they can deduct \$75.00 from the deposits, because the Tenant did not return both keys to the Landlords. The Tenant said this left \$675.00 outstanding from the security deposit and \$250.00 for the pet damage deposit, for a total of \$925.00. The Tenant applied for an order doubling this amount, which she says is owed to her by the Landlords, pursuant to the Act.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

As I indicated to the Parties in the hearing, the Act is very clear cut in terms of a landlord's obligations involving the return of a security deposit and/or pet damage deposit. A landlord may not keep a tenant's deposit, when the tenant has requested the return of the deposit(s). Rather the Landlord must follow the Act, which I have set out below. I advised the Parties that they are welcome to call the RTB for assistance on any tenancy matter, so that they may learn of their rights and obligations in different scenarios.

I find that the Tenant provided her forwarding address to the Landlords on October 6, 2020, and that the tenancy ended on September 30, 2020. Section 38 (1) of the Act states the following about the connection of these dates to a landlord's requirements surrounding the return of the security deposit:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in

writing,
the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Landlords were required to return the \$750.00 security deposit and the \$250.00 pet damage deposit within fifteen days of October 6, 2020, namely by October 21, 2020, or to apply for dispute resolution to claim against the deposits, pursuant to section 38 (1). The Landlords provided no evidence that they returned any amount of the security deposit or applied to the RTB for dispute resolution, claiming against the security deposit. Therefore, I find the Landlords failed to comply with their obligations under section 38 (1).

Section 38 (6) (b) states that if a landlord does not comply with section 38 (1) that the landlord must pay the tenant double the amount of the security and/or pet damage deposit. There is no interest payable on the deposits.

In light of the Tenant's offer for the Landlords to retain \$75.00 for the missing key, I award the Tenant **\$1,850.00** from the Landlord in recovery of double the remaining security and pet damage deposits, pursuant to sections 38 and 67 of the Act. Given that the Tenant was successful in her Application, I also award her recovery of the **\$100.00** Application filing fee pursuant to section 72 of the Act for a total award of **\$1,950.00**.

Conclusion

The Tenant's claim against the Landlords for the return of double the (remaining) security and pet damage deposits is successful in the amount of \$1,850.00. The Landlords did not return the Tenant's security or pet damage deposit or apply for dispute resolution within 15 days of the later of the end of the tenancy and the Landlord receiving the Tenant's forwarding address. I award the Tenant with double the amount of the \$925.00 security deposit, plus recovery of the \$100.00 Application filing fee.

I grant the Tenant a Monetary Order under section 67 of the Act from the Landlord in the amount of **\$1,950.00**.

This Order must be served on the Landlords by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: March 05, 2021

Residential Tenancy Branch