



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CCPR Park Investments Limited
Partnership and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSDB-DR, 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 an order for the return of her security and pet damage deposits that the Landlord is holding without cause; and to recover the \$100.00 cost of her Application filing fee.

An agent for the Tenant, E.S. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Landlord. The teleconference phone line remained open for over 30 minutes and was monitored throughout this time. The only person to call into the hearing was the Agent, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Agent.

I explained the hearing process to the Agent and gave her an opportunity to ask questions about the hearing process. During the hearing the Agent was given the opportunity to provide her evidence orally and to respond to my questions. 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.

As the Landlord did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agent testified that the Tenant served the Landlord with the Notice of Hearing documents by Canada Post registered mail, sent on December 16, 202. The Agent provided a Canada Post tracking number as evidence of service. I find that the Landlord was deemed served with the Notice of Hearing documents in accordance with the Act. I,

therefore, admitted the Application and evidentiary documents, and I continued to hear from the Agent in the absence of the Landlord.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and the Agent confirmed these addresses in the hearing. She also confirmed her understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Agent that pursuant to Rule 7.4, I would only consider the Tenant's written or documentary evidence to which the Agent pointed or directed me in the hearing.

During the initial administrative matters of the hearing, I asked the Agent for the Landlord's name in this matter, as the Landlord identified on the Application was different than that in the tenancy agreement. The Agent confirmed the corporate name of the Landlord from the tenancy agreement; therefore, I amended the Respondent's 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 tenancy agreement indicates that the periodic tenancy began on February 1, 2020, with a monthly rent of \$4,295.00, due on the first day of each month. The tenancy agreement states that the Tenant paid the Landlord a security deposit of \$2,147.50 and a pet damage deposit of \$1,000.00. The Agent said that the Tenant moved out of the residential property on October 30, 2020. The Agent said that the Tenant gave the Landlord her forwarding address in writing to an employee, N.M., during the move-out inspection on October 30, 2020.

In the hearing, the Agent explained the Tenant's claim:

Basically, we want a return of her deposits paid, because there was no indication given of any right of the Landlord to keep those funds. I had a call from

Landlord's staff saying that they had a cheque for part of the deposit. They sent it, but that's the extent of the interaction. Usually, they'd send a breakdown of its make up of, but not here. It is for \$1,145.40 and is dated February 15, 2021.

The Agent said that there was a lot of background with the Landlord in this tenancy. I note this is \$2,002.10 less than the Tenant paid the Landlord in security and pet damage deposits. The Agent said:

[Mom] encouraged me to let it go, but I said no, we'll be going through the proper process. There was no communications about the deposit. When I followed up, they said they needed to have the carpet replaced, and would let me know when they had a quote. That was two weeks after her move-out date. We did apply for double the amount.

Analysis

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

I find that the Tenant provided the Landlord with her written forwarding address on October 30, 2020, and the tenancy ended on October 30, 2020. Section 38(1) of the Act states the following about the connection of these two dates:

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 Landlord was required to return the \$2,147.50 security deposit and the \$1,000.00 pet damage deposit within fifteen days after October 30, 2020, namely by November 14,

2020, or to apply for dispute resolution to claim against the security deposit, pursuant to section 38(1). The Tenant provided evidence that the Landlord returned part of the deposits in the amount of \$1,145.40. Further, there is no evidence before me that the Landlord applied to the RTB to claim against the deposits. Therefore, I find the Landlord failed to comply with their obligations under section 38(1).

Section 38(4) sets out the conditions under which a landlord may retain part or all of a tenant's security and/or pet damage deposits:

38 (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a) 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, or
- (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

The Landlord failed to comply with the requirements of section 38(1), and there is no evidence before me that the conditions under section 38(4) have been met. Further, and pursuant to section 38(6)(b) of the Act, I find the Landlord must pay the Tenant double the amount of the deposits, less the amount paid. There is no interest payable on the security deposit.

38 (6) If a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

DEPOSIT TYPE	AMOUNT
Security deposit	\$2,147.50
Pet damage deposit	\$1,000.00
Double deposits	\$6,295.00
Less amount returned	(\$1,145.40)
Amount Awarded	\$5,149.60

The security deposit is \$2,147.50 plus the \$1,000.00 pet damage deposit, doubled equals \$6,295.00, less the \$1,145.40 returned to the Tenant by the Landlord equals \$5,149.60.

Based on the testimony and evidentiary submissions, and pursuant to sections 38 and 67 of the Act, I award the Tenant \$5,149.60 from the Landlord in recovery of double the security and pet damage deposits owing. Given the Tenant's successful Application, I also award her recovery of the \$100.00 Application filing fee for a Monetary Order of **\$5,249.60**.

Conclusion

The Tenant's claim against the Landlord for return of double the security and pet damage deposits is successful in the amount of \$5,149.60. The Landlord did not return the Tenant's full security and pet damage deposits, nor 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 unpaid security and pet damage deposits, plus recovery of her \$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 **\$5,249.60**.

This Order must be served on the Landlord 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: April 26, 2021

Residential Tenancy Branch