



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 \$937.50 security deposit and her \$937.50 pet damage deposit that she claims the Landlord is holding without cause; and
- recovery of the \$100.00 cost of her Application filing fee.

The Tenant and the Landlord 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 Landlord 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. The Landlord said he received the Application and the documentary evidence from the Tenant and had reviewed it prior to the hearing. The Landlord confirmed that he had not submitted any documentary evidence to the RTB or to the Tenant.

Preliminary and Procedural Matters

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

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 said they had agreed that the Applicant would move into the Landlord's rental unit starting on May 1, 2019. The monthly rent was to be \$1,875.00, due on the first day of each month. The Parties agreed that the Applicant paid the Landlord a security deposit of \$937.50, and a pet damage deposit of \$937.50 ("Deposits").

As it turned out, the tenancy did not go forward. The Landlord said:

Less than two weeks before the move in, she asked me if she could get out of it. When I put the advertisement in, I had a plethora of applicants. I have 25 applications, of which I picked three or four – she was head and shoulders above the others – she was a student doing a masters, she had two dogs, she sold her house and has money - this is great. She was even interested in using the garden, and so I was comfortable with her.

The Landlord said that the Tenant originally only gave him \$500.00 toward the deposits. He said: "To get out of the lease, she had to give the entire deposits."

Tenancy Agreement

The Landlord said that they signed a tenancy agreement; however, the Tenant said she does not think it is a real, legal tenancy agreement. She said she the written agreement was not on a valid RTB template, but on a piece of hotel stationery.

The Tenant agreed that the Landlord could upload this document after the hearing, as she had a copy and agreed to the existence of this signed document. The Landlord uploaded the document that he calls a tenancy agreement, which states the following:

March 19/19

[Applicant] agrees to rent the downstairs, 3 bedroom suite, at [residential property address] from May 1/19 for at least one year. After that either month to month (or another lease). The rent shall be \$1,875 per month and shall be paid

on or before the first of every month. [The Applicant] agrees to pay \$500 down payment and damage/pet deposit is \$1875.~ [The Applicant] is responsible for half utilities.

[Applicant's signature]

[Applicant's printed name]

[Respondent's signature]

[Respondent's printed name]

("Agreement")

The Tenant said that she signed this piece of paper that says she was going to lease the suite, and she said she transferred \$500.00 toward the Deposits.

Deposits

The Tenant agreed that she paid the Landlord \$1,875.00, which comprises the security and pet damage deposits at half each. The Tenant said she seeks the full Deposits back, although she said she originally requested to receive just the pet damage deposit back, "...because my dogs never set foot in there, but he refused, so, I requested the whole amount" she said.

The Landlord said that he kept the Deposits, because:

I read the Act, and it says once a lease is signed and it is binding, she is liable for that entire lease. Later in that same month I had secured another person, who wasn't willing to pay the same amount, because there are so many places. He offered me \$1,700.00 and he took it. I'm now making more than \$100.00 per month less.

I would have happily given her the money back, but her reneging on the lease, and the way she treated me. I'm out the money, and she has a free place to stay to house sit.

I would have been out that whole month's rent. It's signing the lease caused the place to be vacant for a month, because I picked someone who reneged.

I'm a trusting and trustworthy person, and she owes me for that month, because she reneged on her lease. I'll save everybody the hassle, cost the government money, it was the right thing to do, because it is the same end result.

I'm only renting it for \$1,700.00 now, so there's another \$2,000.00 that she would

have had to pay.

The Tenant submitted a copy of a letter she said she sent to the Landlord dated November 13, 2019, in which the Tenant requested the return of the Deposits and provided her forwarding address. In this letter, the Tenant noted section 38 of the Act, which requires a Landlord to either return the deposits or apply for dispute resolution claiming against the deposits within 15 days of the later of the end of the tenancy and receiving the forwarding address in writing.

Analysis

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

Tenancy Agreement

A question before me is whether the Agreement is a legal, binding tenancy agreement between the Parties. "Tenancy Agreement" is defined in section 1 of the Act to mean:

"tenancy agreement" means an agreement, whether written or oral, express, or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

Section 12 of the Act states:

Tenancy agreements include the standard terms

12 The standard terms are terms of every tenancy agreement

- (a) whether the tenancy agreement was entered into on or before, or after, January 1, 2004, and
- (b) whether or not the tenancy agreement is in writing.

I find that pursuant to sections 1 and 12 of the Act there was a valid tenancy created with the Agreement. The Parties signed a dated agreement that has the rental unit address, the start date of the tenancy, the end date is implied – one year from May 1, 2019, - the amount of rent to be paid, the time at which it is due each month, and there is reference to security and pet damage deposits. Further the Tenant paid the Landlord a \$500.00 down payment upon signing this agreement, which I find represents

consideration for a contractual agreement between the Parties. Further, as set out in section 12, the standard terms set out in the Regulation, (automatically) form part of the tenancy agreement. I find that there is no legal requirement that the tenancy agreement be on a prescribed form. I find that the Parties entered into a fixed-term tenancy agreement under the Act, consisting of the Agreement submitted by the Landlord and the standard terms under the Act.

Return of Deposits

I find that the Tenant provided her forwarding address to the Landlord on November 18, 2020, five days after it was mailed to the Landlord. Further, I find that the tenancy ended on or about April 15, 2020, when the Tenant gave notice that she was ending the tenancy before moving in.

Section 38(1) of the Act states the following about the connection of these dates to the Deposits:

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 \$1,875.00 Deposits within fifteen days after November 18, 2020, namely by December 3, 2020, or to apply for dispute resolution to claim against the security deposit, pursuant to section 38(1). The Landlord has provided no evidence that he returned any amount, nor applied to the RTB to claim against the Deposits. Therefore, I find the Landlord failed to comply with his obligations under section 38(1).

Accordingly, I award the Tenant with **\$1,875.00** from the Landlord, pursuant to section

67 of the Act. Given her success in this Application, I also award the Tenant with recovery of the **\$100.00** Application filing fee, pursuant to section 72 of the Act.

Conclusion

The Tenant is successful in her claim for recovery of the security and pet damage deposits in the amount of \$1,875.00. The Tenant is also awarded recovery of the \$100.00 filing fee for this Application from the Landlord.

I grant the Tenant a Monetary Order under section 67 of the Act from the Landlord in the amount of **\$1,975.00**.

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 01, 2021

Residential Tenancy Branch