



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL MNDCL

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- a monetary order for money owed or compensation monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The tenant confirmed receipt of the landlords' application for dispute resolution hearing and evidence. In accordance with section 89 of the *Act*, I find that the tenant duly served with the landlords' application. All parties confirmed receipt of each other's evidentiary materials, and that they were ready to proceed.

Preliminary Issue: Security & Pet Damage Deposits

Both parties confirmed that the landlords had collected a security and pet damage deposit for this tenancy in the amount of \$1,225.00 for each deposit. The tenant testified that she had never given written permission for the landlords to retain this deposit to cover the damages claimed by the landlords. Both parties confirmed that the landlords have not filed an application for dispute resolution for compensation related to the damages claimed by the landlord.

Section 38(1) of the *Act* requires that a landlord, within 15 days of the end of the tenancy or the date on which the landlords receive the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking

an Order allowing the landlords to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agree in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

In this case, I find that the tenant did not consent in writing for the landlords to retain either deposit to pay for damage to the rental unit, nor am I satisfied that the landlords have filed an application for compensation related to damage caused by the tenant. Accordingly, I find that the landlords are still in possession of both deposits, and in accordance with the offsetting provisions of section 72 of the *Act*, I have the discretion to order that the landlords retain the tenant's deposits to offset any monetary awards arising out of this dispute.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of this dispute.

Both parties agreed to the following final and binding settlement of the landlords' application as set out below:

1. The tenant agreed to compensate the landlords \$2,924.00 in loss of rental income for this fixed-term tenancy which was to end on March 6, 2021.
2. The tenant agreed that the landlords may retain both the security and pet damage deposits totalling \$2,450.00 in partial satisfaction of the amount agreed to in condition #1.
3. Both parties agreed that the tenant may pay the remaining \$474.00 in loss of rental income by way of e-transfer to the landlord on or before August 17, 2021.
4. Both parties agreed that this settlement agreement constituted a final and binding resolution of the landlords' application.

Both parties testified at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties testified that they understood and agreed that the above terms are legal, final, binding and enforceable, which settle all aspects of this dispute.

Conclusion

In order to implement the above settlement reached between the parties, and as advised to both parties during the hearing, I order that the landlords retain the tenant's security and pet damage deposits in partial satisfaction of the monetary order owed.

I issue a Monetary Order in the landlords' favour in the amount of \$474.00 for the remaining money owed. The landlords are provided with this Order in the above terms and the tenant must be served with a copy of this Order as soon as possible in the event that the tenant does not abide by condition #2 of the above agreement. Should the tenant 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.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As no hearing was required, I find that the landlords are not entitled to recover the \$100.00 filing fee paid for this application. The landlords must bear the cost of this filing fee.

This decision 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: July 23, 2021

Residential Tenancy Branch