



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for return of all or part of the pet damage deposit or security deposit and to recover the filing fee from the landlord for the cost of the application.

The application was made by way of the Direct Request process and an Interim Decision was provided ordering the tenant to serve the landlord with the Application, notice of this hearing and a copy of the Interim Decision within 3 days of receiving it from the Residential Tenancy Branch. The Interim Decision also states that the application has been referred to this participatory hearing concerning jurisdiction.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The parties were also given the opportunity to question each other and to give submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

During the course of the hearing, the parties agreed that the landlord did not reside in the rental unit during the tenancy, but put the rental unit address on the tenancy agreement as the address of the landlord. I accept that, and I find that the *Residential Tenancy Act* applies to this application.

Issue(s) to be Decided

Has the tenant established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit?

Background and Evidence

The tenant testified that this fixed-term tenancy began on April 1, 2020 and expired on March 31, 2021. A copy of the tenancy agreement has been provided for this hearing which specifies that at the end of the fixed term, the tenant must vacate the rental unit, and the tenant testified that she vacated the rental unit on March 29, 2021. The landlord did not reside on the rental property during the tenancy, but wrote the rental unit address on the tenancy agreement as the address of the landlord.

Rent in the amount of \$2,400.00 was payable on the 1st day of each month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$1,200.00.

The tenant further testified that she provided a forwarding address to the landlord in an email on April 10, 2021 and a copy has been provided for this hearing. The landlord sent some money to the tenant in 2 payments totalling \$348.00. The tenant did not agree that the landlord keep any portion of the security deposit, and has not served the tenant with an Application for Dispute Resolution claiming any part of the security deposit.

The landlord testified that the tenancy agreement specified that the tenant must vacate the rental unit at the end of March, 2021, and the landlord was out of the country. The landlord got a friend to collect the key from the tenant and the friend gave the inspection report to the tenant, but the tenant went through the report by herself too quickly and left. Photographs of damages have been provided for this hearing.

There were 2 tenants named in the tenancy agreement, and each paid half of the security deposit. The other tenant agreed that the landlord could keep the balance of the security deposit in a Social Media post, however a copy has not been provided for this hearing. No receipts for the payment of the security deposit have been provided for this hearing, and the landlord testified that she doesn't remember how it was paid, but the parties had an agreement that the tenants didn't need a receipt.

Analysis

The parties disagree on the circumstances around the move-in and move-out condition inspection reports. The *Residential Tenancy Act* specifies that a landlord who fails to ensure that the reports are done may not make a claim against the security deposit for

damages, and neither party has provided a copy of either of the reports. That doesn't matter in this case; the landlord hasn't made a claim against the security deposit.

The *Act* states that a landlord must return a security deposit and/or pet damage deposit to a tenant in full within 15 days of the date the tenancy ends or the date the landlord receives a tenant's forwarding address in writing, whichever is later, or must make an Application for Dispute Resolution claiming against the security deposit within that 15 day period. If the landlord fails to do either, the landlord must repay double the amount.

There is no question that the security deposit is \$1,200.00 and the landlord returned \$348.00. The evidence shows that the landlord returned \$25.00 on April 17, 2021 and \$323.00 on April 15, 2021, retaining \$852.00. The tenant testified that the landlord was provided with a forwarding address in writing on April 10, 2021, and the tenant did not agree in writing that the landlord keep any portion of the security deposit. The landlord did not dispute that. I find that those 2 payments were made within the 15 days as required.

The landlord testified that half of the security deposit was paid to the landlord by the roommate who authorized the landlord to keep a portion. There is no evidence of that and the landlord testified that the parties had an agreement that no receipts were necessary, and doesn't recall how the security deposit was paid to the landlord.

That testimony was disputed by the tenant who testified that the roommate didn't move in during the first month of the tenancy, and the tenant paid the entire security deposit at the beginning of the tenancy.

I have reviewed all of the evidentiary material. The landlord has provided a letter from the roommate, however there is no mention of the payment of the security deposit or authorization to keep the security deposit, and I accept the testimony of the tenant.

I find that the landlord has failed to comply with the *Act* and the tenant is entitled to double the amount of the security deposit, less the amount already returned to the tenant ($\$1,200.00 \times 2 = \$2,400.00 - \$348.00 = \$2,052.00$).

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,152.00.

This order is final and binding and may be enforced.

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: September 23, 2021

Residential Tenancy Branch