



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT
 MNDCL-S, FFL

Introduction

This hearing was convened by way of conference call concerning applications made by the tenant and by a landlord. The tenant has applied for 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. The tenant's application was made by way of the Direct Request process which was referred to this participatory hearing.

A landlord has applied as against the tenant for a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant.

The applications have been joined to be heard together.

The tenant attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for in excess of 10 minutes prior to hearing any testimony, and no one for either of the landlords joined the call.

The tenant testified that the landlord named in the tenancy agreement was served with the tenant's application and notice of this hearing and evidentiary material by registered mail on June 22, 2021. The tenant has provided a copy of a Registered Domestic Customer Receipt addressed to the landlord as well as a copy of a Canada Post cash register receipt bearing that date and I find that the landlord has been served in accordance with the *Residential Tenancy Act*.

The tenant also testified that the landlords have not served the tenant with the Landlord's Application for Dispute Resolution or any of the landlord's evidence.

Since neither of the landlords have attended the hearing, I dismiss the landlord's application in its entirety without leave to reapply.

All evidence of the tenant has been reviewed and is considered in this Decision.

Issue(s) to be Decided

The issue remaining to be decided is:

- 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 or pet damage deposit?

Background and Evidence

The tenant testified that this month-to-month tenancy began on April 15, 2020 and a new tenancy agreement was made, removing the name of one tenant, for a month-to-month tenancy commencing on November 1, 2020. Rent in the amount of \$1,800.00 was payable on the 1st day of each month and there are no rental arrears. On April 16, 2020 the landlord collected a security deposit from the tenant in the amount of \$900.00 and a pet damage deposit in the amount of \$900.00 was collected from the tenant on June 1, 2020. The rental unit is a single family home, and a copy of the latest tenancy agreement has been provided as evidence for this hearing by the tenant.

The tenant further testified that on March 1, 2021 the landlord sent a text message to the tenant saying that the owner's home had sold and the owner would be moving into the rental unit, giving the tenant a few days to move out. The landlord served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property on March 15, 2021, and the tenant vacated the rental unit at the end of April, 2021, and the tenant did not pay rent for that month as compensation required.

Move-in and move-out condition inspection reports were completed, and the tenant tried to offer the landlord a forwarding address but the landlord said that she didn't need it. The tenant sent the forwarding address to the landlord on May 15, 2021. The landlord returned \$900.00 of the deposits about a week after moving out, by e-transfer with a message stating that the tenant should be grateful that the landlord sent that much money because of an outstanding gas bill. A copy of the e-transfer with the message

has been provided for this hearing. However, the tenant testified that there was no requirement to put the gas in the tenant's name.

The tenant did not agree in writing that the landlord retain any portion of the deposits.

Analysis

The tenant's application names 1 landlord, and having reviewed the tenancy agreement, which names the same landlord, I find that the tenant has complied with the *Residential Tenancy Act* and has named the correct landlord.

A landlord may not arbitrarily keep any portion of a security deposit or pet damage deposit collected from a tenant. The *Act* specifies that a landlord must return the deposits within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an application claiming against the deposit(s) within that 15 day period and serve the tenant. If the landlord fails to do either, the landlord must repay double the amounts.

In this case, I accept the undisputed testimony of the tenant that the tenancy ended on April 30, 2021 and the landlord received the tenant's forwarding address in writing on May 15, 2021. A landlord filed an Application for Dispute Resolution on June 21, 2021, which is beyond the 15 day period. Further, the landlord did not serve the tenant with the landlord's application for dispute resolution, and didn't attend the hearing.

I also accept the undisputed testimony of the tenant that the landlord returned \$900.00 of the deposits, and has provided a copy of the e-transfer. It is not clear in the evidence whether the landlord returned the security deposit or the pet damage deposit; and a landlord may only claim against a pet damage deposit for damages caused by a pet.

However, I refer to Residential Tenancy Policy Guideline #17 – Security Deposit and Set-Off which sets out examples to illustrate the different ways in which the deposits may be doubled:

Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held. The arbitrator doubles the amount paid as a security deposit ($\$400 \times 2 = \800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is \$525.00 ($\$800 - \$275 = \525).

Therefore, I am satisfied that the tenant is entitled to double the amount of both deposits, or $\$1,800.00 \times 2 = \$3,600.00$, less the $\$900.00$ returned to the tenant, for a total of $\$2,700.00$.

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, the landlord's application is hereby dismissed in its entirety without leave to reapply.

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 $\$2,800.00$.

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: October 14, 2021

Residential Tenancy Branch