



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on July 24, 2021 (the “Application”). The Tenant applied as follows:

- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement
- To recover the filing fee

The Tenant appeared at the hearing with D.L. to assist. Nobody appeared at the hearing for the Landlord. I explained the hearing process to the Tenant and D.L. who did not have questions when asked. I told the Tenant and D.L. they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Tenant and D.L. provided affirmed testimony.

The Tenant submitted evidence prior to the hearing. The Landlord did not submit evidence. I addressed service of the hearing package and Tenant’s evidence.

D.L. testified that the hearing package and Tenant’s evidence were sent to the Landlord by email to an email address for service provided by the Landlord. D.L. testified that the email was sent August 26, 2021.

I accept the undisputed testimony of D.L. and find the Landlord was served with the hearing package and Tenant’s evidence in accordance with sections 88(j) and 89(1)(f) of the *Residential Tenancy Act* (the “Act”) as well as sections 43(1) and 43(2) of the *Residential Tenancy Regulation* (the “Regulations”) on August 26, 2021. Pursuant to section 44 of the *Regulations*, the Landlord is deemed to have received the hearing

package and evidence August 29, 2021, in sufficient time to prepare for and appear at the hearing.

As I was satisfied of service, I proceeded with the hearing in the absence of the Landlord. The Tenant and D.L. were given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and oral testimony of the Tenant and D.L. I will only refer to the evidence I find relevant in this decision.

Issues

1. Is the Tenant entitled to an order that the Landlord comply with the Act, regulation and/or the tenancy agreement?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

Two pages of a written tenancy agreement were submitted as evidence. The tenancy started March 01, 2020 and was for a fixed term ending March 01, 2021. The tenancy then became a month-to-month tenancy. Rent was \$1,500.00 per month due on the first day of each month.

D.L. testified that the Tenant paid a \$1,500.00 security deposit and no pet damage deposit.

D.L. testified that the Tenant was locked out of the rental unit August 18, 2021.

The Tenant sought return of \$750.00 of the security deposit because the Landlord overcharged the Tenant by collecting the equivalent of one month's rent. D.L. confirmed that the Tenant paid the full \$1,500.00 as a security deposit and that none of this was for a pet damage deposit.

Analysis

I accept the undisputed testimony of D.L. that the Tenant was locked out of the rental unit in August of 2021 and therefore note that section 1 of the *Act* defines the term "landlord" which includes "a former landlord, when the context requires this".

Section 62 of the *Act* states:

(3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

Section 19 of the *Act* states:

19 (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.

(2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

I accept the undisputed testimony of D.L. that the Tenant paid the Landlord a \$1,500.00 security deposit which is the equivalent of one month's rent. I find the Landlord failed to comply with section 19(1) of the *Act*. Pursuant to section 19(2) of the *Act*, the Tenant is entitled to the return of \$750.00 of the security deposit. As stated, I accept that the Tenant was locked out of the rental unit in August. I find the Tenant cannot deduct the overpayment of \$750.00 from rent. I find the Tenant can recover the overpayment of \$750.00 pursuant to section 19(2) of the *Act* through an order made pursuant to section 62(3) of the *Act* that the Landlord comply with section 19(1) of the *Act*. I find the Tenant is entitled to the order sought given the Tenant overpaid the security deposit by \$750.00.

Based on the above, and pursuant to section 62(3) of the *Act*, **I order the Landlord to return \$750.00 of the security deposit to the Tenant immediately.**

Given the Tenant was successful in the Application, I award them \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlord must pay the Tenant \$850.00 and the Tenant is issued a Monetary Order in this amount pursuant to section 67 of the *Act*.

Conclusion

The Landlord must pay the Tenant \$850.00 and the Tenant is issued a Monetary Order in this amount. This Order must be served on the Landlord. If the Landlord fails to comply with this Order, it may be filed in the Small Claims division of the Provincial Court and enforced as an order of that court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: November 23, 2021

Residential Tenancy Branch