



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 as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for the return of double the \$900.00 security deposit that he says the Landlord is holding without cause; and to recover the \$100.00 cost of his Application filing fee.

The Tenant, the Landlord, K.R., and an agent for the Landlord, J.R. ("Agent") 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 it. During the hearing the Parties 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 they had received the Application and the documentary evidence from the Tenant and had reviewed it prior to the hearing. The Agent confirmed that the Landlord had not submitted any documentary evidence to the RTB or to the Tenant in this matter.

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.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

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 agreed that the periodic tenancy began on September 1, 2017, with a monthly rent of \$1,800.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$900.00, and no pet damage deposit. They agreed that the tenancy ended on July 31, 2021, and that the Tenant provided his forwarding address to the Landlord in writing on August 14, 2021.

In the hearing, the Landlord said the following about the Tenant's claim:

If you look, every month these guys. There is no security deposit. They never gave us a security deposit. We renovated it, and they came in and their references checked out. Their rent was \$1,845.00 and they were paying that after two years. Because we had some issues, because unauthorized marijuana issues. They stopped paying rent and went back to \$1,800.00. But they were paying for a year and a half. They were supposed to pay that remaining balance. The tenancy ended and they got a 48-hour eviction notice.

They stayed longer than they were supposed to. They didn't do an inspection with us. There was nothing to give back. They left a bunch of garbage outside. They stayed a week longer than they were supposed to.

Also, the case regarding the marijuana machine. Not allowed based on the tenancy. That was after they were evicted.

There was no security deposit given. So, what to respond back?
No security deposit given at all. Nothing by e-transfer by either party.

The Tenant responded to the Agent's testimony, as follows:

Did I pay security deposit? Is there evidence?
No, I don't think so. I think we paid by cash.

Why not tell us there was no security deposit? Why go through this whole process? You just stay silent until now?

The Agent repeated: “Just to emphasis, no security deposit so nothing to give back.”

Analysis

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

Rule 6.6 sets out the burden and standard of proof in this administrative hearing:

Rule 6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. . . .

As set out in Policy Guideline #16 (“PG #16”), “The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party claiming compensation to provide evidence to establish that compensation is due.” [emphasis added]

Section 38 of the Act states that a landlord must do one of two things at the end of the tenancy. Within 15 days of the later of the end of the tenancy and receiving the tenant’s forwarding address in writing, the landlord must: (i) repay any security deposit and/or pet damage deposit; or (ii) apply for dispute resolution claiming against the security deposit and/or pet damage deposit. If the Landlord does not do one of these actions within this timeframe, the landlord is liable to pay double the security and/or pet damage deposit(s) pursuant to section 38(6) of the Act.

However, in the case before me, the Landlord denies that a security deposit was paid for this tenancy, whereas the Tenant said that he paid a \$900.00 security deposit, which was half of his starting rent. However, when I provided details of the tenancy, including the Tenant having paid the Landlord a \$900.00 security deposit, the Parties both agreed. During testimony, however, the Agent repeated that the Tenant had not paid

any security deposit to the Landlord.

I note that the Tenant has not provided any proof that he paid this deposit, such as a receipt from the Landlord, if it was paid in cash, or a bank statement evidencing the withdrawal or an e-transfer to the Landlord. As such, I find that the Tenant has failed to fulfil his burden of proof on a balance of probabilities. Pursuant to section 62 of the Act, I dismiss the Tenant's claim wholly without leave to reapply.

Conclusion

The Tenant is unsuccessful in his Application, as he failed to provide sufficient evidence to support his claim on a balance of probabilities. Accordingly, the Tenant's Application is dismissed wholly, without leave to reapply.

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: March 18, 2022

Residential Tenancy Branch