



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on September 18, 2021. The Tenant applied for the following relief, pursuant to the Residential Tenancy Act (the Act):

- an order that the Landlords return all or part of the security deposit and/or pet damage deposit; and
- an order granting recovery of the filing fee.

The Tenant and the Landlords attended the hearing and provided affirmed testimony.

The Tenant testified the Notice of Dispute Resolution Hearing package was served on the Landlords in person by MF on or about November 20, 2021. The Landlords acknowledged receipt.

The Landlords submitted documentary evidence in response to the Tenant's application. The Landlords testified the evidence was served on the Tenant by registered mail on April 16, 2022. The Tenant acknowledged receipt.

No issues were raised regarding service or receipt of the above documents during the hearing. Accordingly, pursuant to section 71 of the Act, I find that the above documents were sufficiently served for the purposes of the Act.

The parties were advised that Rule of Procedure 6.11 prohibits the recording of dispute resolution proceedings.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to recover the security deposit and/or pet damage deposit?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The parties agreed the tenancy began on June 1, 2018 and ended on July 15, 2021. The parties agreed the Tenant paid a security deposit of \$845.00, which was returned to the Tenant in July and August 2021.

The parties agreed the Tenant provided the Landlords with a forwarding address in writing on July 15, 2021. The Landlords submitted into evidence a copy of a Condition Inspection Report which confirmed the move-in inspection occurred on June 1, 2018, and the move-out inspection occurred on July 15, 2021. The Condition Inspection Report includes the Tenant's forwarding address.

The Tenant testified that at the time of the move-out inspection, there were still belongings on the lawn. However, the Tenant testified she was going through a depression at that time, had to find a home, and was struggling to get her belongings moved. The Tenant testified that some belongings were left at the rental property as of July 17, 2021, but that someone was coming to pick them up.

The Landlords testified that the security deposit was returned to the Tenant in payments made on July 23, 2021 and August 3, 2021. A copy of entries in a cheque book were submitted in support. The Tenant acknowledged receipt of the first payment in an email dated July 30, 2021, a copy of which was submitted into evidence by the Landlords. The Tenant also acknowledged that the second payment was sent to the forwarding address provided (a post office box) but was not picked up until several weeks later. The Landlords testified that they recently checked their bank statement and it appears the cheques have not been cashed.

The Landlords testified that \$300.00 was initially withheld based on a discussion with JP, a tenant named in the tenancy agreement, during the move-out condition inspection. The Landlords testified they became concerned that belongings would not be removed and therefore included the deduction. In the Condition Inspection Report, the parties agreed to a deduction of \$300.00 if the Tenant's belongings were not removed from the rental property by July 16, 2021, at 4:00 p.m.

The Landlords referred to an email to the Tenant dated July 18, 2021, a copy of which was submitted into evidence. The email indicates that some of the Tenant's belongings were removed on July 17, 2021, but that other items remained. Photographs attached to the email showed shelving units and a wicker coffee table. The Landlords confirmed the attached photographs were taken on July 18, 2021.

Despite the agreement contained in the Condition Inspection Report, the Landlords testified they sent the remaining \$300.00 to the Tenant on August 3, 2021. As noted above, the Tenant agreed this payment was sent on August 3, 2021, and acknowledged receipt.

Analysis

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

Section 38(1) of the Act requires a landlord to repay deposits or make an application to keep them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the Act confirms the tenant is entitled to the return of double the amount of the deposits. The language in the Act is mandatory.

In this case, I find the Tenant provided the Landlords with a forwarding address in writing on July 15, 2021. I also find the Landlords made a partial payment of \$545.00 to the Tenant. I am satisfied this payment was received by the Tenant by July 30, 2021, within 15 days after the Landlords received the Tenant's forwarding address in writing. As a result, I find that this amount is not subject to the doubling provisions in section 38(6) of the Act.

With respect to the \$300.00 which was initially withheld by the Landlords, I find it is more likely than not that another tenant named in the tenancy agreement acceded to the Landlords' request for the deduction during the move-out inspection. The specificity of the term included in the Condition Inspection Report lends weight to a finding that the deduction was agreed to. In addition, I accept the email dated July 18, 2021, as evidence that the Tenant's belongings remained on the rental property on that date. As a result, I find the Landlords were entitled to retain the deduction. Although the Landlords chose to return \$300.00 to the Tenant on August 3, 2021, I find they were under no obligation to do so. As a result, I find that this amount is not subject to the doubling provisions in section 38(6) of the Act.

Considering the above, I find the Tenant has received the security deposit in full (\$845.00) and is not entitled to receive double the amount of the security deposit in accordance with section 38(6) of the Act.

The Tenant's application is dismissed without leave to reapply.

Conclusion

The Tenant's application is dismissed without leave to reapply.

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: May 10, 2022

Residential Tenancy Branch