



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MINDFUL PROPERTY MANAGEMENT and 1955 WESTERN DRIVE
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDCT, FFT

Introduction

This hearing was scheduled to convene at 1:30 p.m. on May 19, 2022 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 and security deposit; a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlords for the cost of the application.

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 10 minutes prior to hearing any testimony, and no one for the landlords joined the call.

The tenant testified that each of the 2 landlords was individually served with the Notice of Dispute Resolution Proceeding and all evidence by registered mail on October 14, 2021 and has provided copies of Registered Domestic Customer Receipts addressed to the landlords and stamped with that date by Canada Post. The tenant has also provided copies of Canada Post tracking print-outs showing that each of the packages were successfully delivered. I am satisfied that both landlords have been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlords for all or part or double the amount of the security deposit or pet damage deposit?

- Has the tenant established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for recovery of half a month's rent?

Background and Evidence

The tenant testified that this fixed term tenancy began on May 15, 2020 and was to revert to a month-to-month tenancy after April 30, 2021. Rent in the amount of \$1,590.00 was payable on the 1st day of each month and the tenant paid a pro-rated amount for the first partial month of the tenancy. There are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$795.00 as well as a pet damage deposit in the amount of \$795.00. The rental unit is an apartment in a 3 story building and a copy of the tenancy agreement has been provided as evidence for this hearing.

The tenant further testified that a move-in condition inspection report was completed by the parties at the beginning of the tenancy. The parties also completed a move-out condition inspection report on March 14, 2021 and the tenant provided a forwarding address on that report. A copy has been provided for this hearing.

The landlord returned the \$795.00 security deposit and the \$795.00 pet damage deposit on April 7, 2021.

The tenant notified the landlord by email of her intent to vacate the rental unit on March 15, 2021, and the landlord's paperwork regarding move-outs stated that the tenant could do what the tenant can to find another tenant, and if successful the tenant would be released from the lease. A copy of that document has also been provided for this hearing. The tenant did so and moved out on March 14, 2021, having paid a full month's rent on March 1, 2021. A new tenant moved in on March 15, 2021, and the tenant claims \$795.00.

The parties had discussions via email, copies of which have been provided for this hearing, wherein the landlord agreed that if the landlord was paid for the same time period by a new tenant, the tenant would get the overpayment returned. It also states that a lease break fee of \$795.00 applies, which is stated in the Addendum of the lease. The tenant didn't know what that meant, and another email of the landlord dated March 12, 2021 states, "When you signed a one year lease it was stated in the addendum how it works should you break your lease. Article #2 states that should you break your lease

you are responsible for the additional costs the company otherwise would not incur if you hadn't broken your lease." That paragraph of the Addendum states as follows:

"2. Breaking lease. Should you break your lease agreement, you will automatically forfeit the security deposit of \$795. The tenant may be held responsible for the remainder of the term should the landlord not be able to re-rent the unit."

Analysis

Firstly, a landlord is required to return a security deposit and/or pet damage deposit to a tenant in full 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 for dispute resolution claiming against the deposit(s) within that 15 day period. If the landlord does neither, the landlord must repay double the amount(s).

In this case, I am satisfied that the tenancy ended on March 15, 2021 and the tenant provided a forwarding address in writing on the move-out condition inspection report on March 14, 2021. The landlord returned the original amounts of both deposits on April 7, 2021, however in my calculation, the landlord ought to have returned both deposits to the tenant by no later than March 30, 2021. Therefore, I find that the landlords must repay double the amounts. I find that the tenant has established a claim of double, and is therefore entitled to another \$795.00 for the security deposit and \$795.00 for the pet damage deposit.

I have reviewed the tenancy agreement, and certainly paragraph 2 in the Addendum is not legal. A landlord may not include any term indicating that a security deposit will be forfeited by a tenant at the end of a tenancy. A landlord may include liquidated damages, but the term in the Addendum is not lawful and not enforceable.

The tenant has provided evidence that the landlord has agreed that if successfully re-rented the landlord will refund the balance of the rent collected after a new tenant moves in. A landlord may not collect rent from 2 different tenancies for the same time period. The emails provided by the tenant are evidence that the landlords did re-rent effective March 15, 2021, and I am satisfied that the tenant has established a claim of \$795.00 for recovery of a partial month of rent.

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 landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,485.00.

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: May 19, 2022

Residential Tenancy Branch