



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDB-DR, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- authorization to obtain a return of double the amount of the tenant's security and pet damage deposits (collectively "deposits"), pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlords' agent and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. This hearing lasted approximately 27 minutes.

The landlords' agent confirmed that he is the property manager for the landlord company named in this application and that he had permission to speak on its behalf. He stated that the landlord company was a property management company that represented the owner during this tenancy. He said that he also had permission to represent the individual landlord owner named in this application. He confirmed the rental unit address. He provided his email address for me to send this decision to both landlords after the hearing.

The tenant confirmed her name and spelling. She provided her email address for me to send this decision to her after the hearing.

Rule 6.11 of the Residential Tenancy Branch *Rules of Procedure* does not permit recording of this hearing by any party. At the outset of this hearing, the landlords' agent and the tenant both separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions. Neither party made any adjournment or accommodation requests. Both parties confirmed that they were ready to proceed with this hearing, they wanted me to make a decision, and they did not want to settle this application.

The tenant's application was originally scheduled as a direct request proceeding, which is a non-participatory hearing. The direct request proceeding is based on the tenant's paper application only, not any submissions from the landlords. An "interim decision," dated October 13, 2021, was issued by an Adjudicator for the direct request proceeding. The interim decision adjourned the direct request proceeding to this participatory hearing.

The tenant was required to serve the landlords with a copy of the interim decision and the notice of reconvened hearing. The landlords' agent confirmed receipt of the above documents. In accordance with sections 89 and 90 of the *Act*, I find that both landlords were duly served with the above documents.

The landlords' agent confirmed receipt of the tenant's original application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both landlords were duly served with the tenant's application.

The tenant confirmed receipt of the landlords' evidence. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlords' evidence.

Issues to be Decided

Is the tenant entitled to obtain a return of double the value of her deposits?

Is the tenant entitled to recover the filing fee paid for this application?

Background and Evidence

While I have turned my mind to the tenant's documentary evidence and the testimony of both parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on May 1, 2019 and ended on July 31, 2021. Monthly rent in the amount of \$950.00 was payable on the first day of each month. A security deposit of \$750.00 and a pet damage deposit of \$750.00 were paid by the tenant and the landlords returned \$1,371.75 to the tenant on November 10, 2021, by way of a cheque that was cashed by the tenant. The landlords retained \$128.25 from the tenants' deposits. A written tenancy agreement was signed by both parties. Move-in and move-out condition inspection reports were completed for this tenancy. The landlord received a written forwarding address on August 2, 2021, from the tenant, by way of the move-out condition inspection report. The landlords did not file an application for dispute resolution to retain any amount from the tenant's deposits. The landlords did not have the tenant's written permission to keep any part of the tenant's deposits.

The tenant confirmed that she seeks the return of double the value of her deposits of \$1,500.00, totalling \$3,000.00, minus the \$1,371.75 that was returned to her by the landlords, plus the \$100.00 application filing fee.

The tenant testified regarding the following facts. She tried to settle this application with the landlords before this hearing but that did not occur. She went through a lot of stress in order to file this application to get back her deposits from the landlords. The landlords only returned a portion of her deposits after she filed this application first.

The landlords' agent testified regarding the following facts. The tenant was supposed to leave the rental unit by July 31, 2021, as per the mutual agreement. The tenant asked for more time to clean the rental unit and she was given two extra days to move out until August 2, 2021. There were still damages in the rental unit, including holes in the walls, that were not fixed by the tenant. The landlords completed repairs, since the tenant returned the rental unit to the landlords in a lesser condition. Both parties agreed on the move-out condition inspection report that the landlords would do the repairs on their own so the tenant would not have continued access to the rental unit after to complete the repairs. The landlords did reasonable repairs and the tenant thought she could do the repairs after. The landlords, in good faith, reduced the claim against the deposits for repairs and utilities. The landlord pro-rated the utilities and the amounts were close to what was indicated on the move-out condition inspection report.

The tenant stated the following in response to the landlords' agent's submissions. The offer was reduced. She refused to pay the bill before, with only estimated costs, and said she would only pay it after. There are pictures of the nail holes in the walls of the rental unit.

Analysis

Section 38 of the *Act* requires the landlords to either return the tenant's deposits or file for dispute resolution for authorization to retain the deposits, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposits. However, this provision does not apply if the landlords have obtained the tenant's written authorization to retain all or a portion of the deposits to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlords, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings on a balance of probabilities, based on the documentary evidence and the undisputed testimony of both parties at this hearing. This tenancy ended on July 31, 2021. The tenant provided a written forwarding address to the landlords, by way of the move-out condition inspection report on August 2, 2021, which was received by the landlords on the same date. The landlords did not have the tenant's written permission to keep any amount from the tenant's deposits. The landlords did not file an application at the RTB to keep any amount from the tenant's deposits.

The landlords returned a partial amount of \$1,371.75 from the tenant's deposits to the tenant on November 10, 2021, which the tenant received. However, the landlords did not return this partial amount to the tenant within 15 days of the later forwarding address date of August 2, 2021 or file an application at the RTB to claim against it.

In accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17, I find that the tenant is entitled to receive double the value of her security deposit of \$750.00, totalling \$1,500.00, and double the value of her pet damage deposit of \$750.00, totalling \$1,500.00. Therefore, the tenant is entitled to double the value of both deposits, totalling \$3,000.00, minus the returned portion of \$1,371.75, leaving a balance of \$1,628.25. There is no interest payable on the deposits during the period of this tenancy.

As the tenant was successful in this application, I find that she is entitled to recover the \$100.00 filing fee from the landlords.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$1,728.25 against the landlord(s). The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with this Order, this Order 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 *Residential Tenancy Act*.

Dated: May 19, 2022

Residential Tenancy Branch