



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNETC, MNDC, FF

Introduction

This hearing convened to deal with the tenants' application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenants applied on November 28, 2021, for compensation from the landlords related to a Two Month Notice to End Tenancy for Landlord's Use of Property (Notice), compensation for a monetary loss or other money owed, and recovery of the cost of the filing fee.

The tenant attended the hearing; however, no one on the landlord's behalf attended.

The tenant stated they served the landlord with their Application for Dispute Resolution, evidence, and Notice of Hearing (application package) by registered mail on December 4, 2021. The tenant filed a copy of the registered mail receipt showing the tracking number. The tenant explained that the listed landlord took over the residential property on September 9, 2021 and was the landlord after that date.

I accept the tenant's evidence and find that the landlord was served the application and notice of this hearing in a manner complying with section 89(1) of the Act and the hearing proceeded in the landlord's absence.

The tenant was provided the opportunity to present their evidence orally and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the submissions and/or arguments are reproduced here.

Following is a summary of those submissions and includes only that which is relevant to the matters before me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

The tenant indicated that the claim for monetary compensation related to a 2 Month Notice was not accurate. The tenant indicated that their claim was for the doubling of their security deposit and pet damage deposit, as explained in the details of the dispute, as the landlord did not return either deposit within 15 days of the tenancy ending or providing the landlord with their written forwarding address. Additionally, there were other claims related to the extra charges from the landlord for which they were not responsible.

As a result, I find it appropriate to amend the tenants' application to exclude their request for compensation related to a 2 Month Notice. I do not find it procedurally unfair to the respondent as the details in the tenants' application and evidence were clear as to their actual claim.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation from the landlord and to recover the cost of the filing fee?

Background and Evidence

The tenant submitted on their application that the tenancy began February 28, 2021 and ended on September 29, 2021. The tenant said at the hearing they took possession of the rental unit in April 2021. The tenant submitted they paid a security deposit and pet damage deposit of \$1,114 each.

The tenants' monetary claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Double of the security deposit due to failure of timely return	(\$1,114 x 2) - \$1,114 received = \$1,114
2. Double of the pet damage deposit due to failure of timely return	(\$1,114 x 2) - \$1,114 received = \$1,114
3. Parking stall charge	\$125
4. Wire transfer fee	\$17
5. Filing fee	\$100
TOTAL	\$2,470

In support of their claim, the tenant submitted that the landlord failed to return their security deposit and pet damage deposit (collectively, the deposits) within 15 days of the end of the tenancy. The tenant submitted that they provided their written forwarding address on the same form used to provide their notice to vacate, dated August 31, 2021. Filed in evidence was a copy of the notice to vacate and the written forwarding address, on the form used by the previous landlord.

The tenant submitted that the landlord initially tried to return the deposits 22 days after the tenancy ended, but as they were mailed to an incorrect address, not the one provided to the landlord on the notice to vacate, the payments were not received. Ultimately, the landlord made a wire transfer of the funds into the tenants' bank account on November 4, 2021, 35 days after the tenancy ended.

Although the tenants ultimately received their deposits, as the landlord failed to return the deposits within 15 days, the tenants assert they are entitled have their deposits doubled under the Act.

Filed in evidence were emails between the parties, indicating that the landlord mailed the deposits to the tenants on October 22, 2021, and to which address.

As to the remaining claims, the tenants wrote the following:

Tenant was charged \$17 wire transfer fee without authorization or notification when security deposit was returned via wire transfer. Tenant was charged \$125 parking fee for September 2021 after cancelling on August 26h, 2021. Landlord told tenant that the charge would be credited to the tenants account. Parking charge was not returned to tenant at or after move out. RTB Dispute Filing Fee - \$100. Tenant would not have to apply if landlord returned charges and deposits in a timely manner

Filed in evidence was a copy of the tenants' bank statement showing the transfer of funds on November 4, 2022, the \$17 charge on the same date, both from the landlord, and an email acknowledging that the parking charge after cancellation would be credited to the tenants' account.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Security deposit and pet damage deposit –

Under section 38(1) of the Act, a landlord is required to either return a tenant's security deposit and pet damage deposit or to file an application for dispute resolution to retain the deposits within 15 days of the later of receiving the tenant's forwarding address in writing or the end of the tenancy. Section 38(6) of the Act states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the amount of their security deposit and pet damage deposit.

In the case before me, the tenants' undisputed evidence shows that the tenancy ended on September 29, 2021, and that the tenants provided their written forwarding address to the landlord on August 31, 2021, on their notice to vacate.

I have no evidence before me that the landlord has filed an application to retain the deposits.

Due to the above, I find the landlord was obligated to return the tenants' security deposit and pet damage deposit, in full, or make an application for dispute resolution claiming against the deposits by October 14, 2021, 15 days after the tenancy ended on September 29, 2021.

Instead, the landlord attempted to return the deposits on October 22, 2021, to an incorrect address and ultimately returned the deposits by bank transfer on November 4, 2021.

I therefore find the tenants are entitled to a return of their security deposit and pet damage deposit and that I must double this amount.

Balance of the monetary claim –

I find the tenants submitted sufficient and undisputed evidence to support that they have incurred additional costs due to the actions of the landlord. For instance, the evidence shows that the tenants were unaware that the landlord would return the late deposits by bank transfer, which resulted in a \$17 charge.

I also find the landlord promised to reimburse the parking charge of \$125 they inadvertently made after the parking was cancelled, and that they did not. I find the tenants submitted sufficient documentary evidence to support both claims.

Due to their successful application, I grant the tenants recovery of their filing fee of \$100.

For the above reasons, I find the tenants have established a monetary claim of **\$2,470**, comprised of their security deposit of **\$1,114** and their pet damage deposit of **\$1,114**, **doubled** to **\$4,456**, less the two deposits returned late, or **\$2,228**, the bank charge of **\$17**, the reimbursement of the parking fee of **\$125** charged after their parking contract was cancelled, and the filing fee of **\$100** paid for this application.

As a result, I grant the tenants a monetary order (Order) under section 67 of the Act for **\$2,470**. The landlord must be served with this Order to be enforceable. Should the landlord 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.

The landlord is cautioned that enforcement costs are subject to recovery from the tenants.

Conclusion

The tenants' application for monetary compensation is granted and they have been awarded a monetary order in the amount of **\$2,470**.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: July 12, 2022