



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for the return of the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Tenant states that they did not receive any evidence from the Landlord. The Landlord states that they provided their evidence to the Tenant through an app. The Landlord confirms that their evidence is to show the damages to the unit. The Landlord confirms that they have not made an application to claim for damages to the unit. The Landlord raised no issues with the Tenant’s evidence.

Rule 3.6 of the Rules of Provides that all evidence must be relevant to the claims being made in the application. As there is no cross application from the Landlord in relation to damages to the unit for these dispute proceedings, and as evidence of damages to a unit are otherwise not relevant to a claim for return of the security deposit, whether or not the Tenant was given a copy of the Landlord’s evidence, I decline to consider the Landlord’s evidence.

Issue(s) to be Decided

Is the Tenant entitled to return of the security deposit?

Is the Tenant entitled to recovery of the filing fee?

Relevant Background and Evidence

The following are agreed or undisputed facts: the tenancy under written agreement started March 1, 2021 and ended on July 31, 2022. Rent of \$1,500.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,500.00 as a security deposit. The Tenant sent their forwarding address to the Landlord by email on July 31, 2021 and the Landlord received the forwarding address in August 2021. On August 23, 2021 the Landlord returned \$408.00 of the security deposit and retained the remaining amount. The Landlord did not have any written authority from the Tenant to retain any part of the security deposit. The Landlord did not make an application for dispute resolution to claim against the security deposit.

Analysis

Section 19 of the Act provides as follows:

(1)A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.

(2)If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

Noting that the Landlord collected a security deposit greater than allowed under the Act, I set this section out for both Parties' information.

Section 38(1) of the Act provides that except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a)the date the tenancy ends, and

(b)the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38(4)(a) of the Act provides that a landlord may retain an amount from a security deposit or a pet damage deposit if, at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.

Section 38(6) of the Act provides that if a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the undisputed evidence that the Landlord received the forwarding address from the Tenant but did not return the full amount of the security deposit or make an application to retain the security deposit I find that the Landlord must now pay the Tenant double the security deposit plus zero interest of **\$3,000.00**. Deducting the **\$408.00** already paid, leaves **\$2,592.00** owed to the Tenant. The Landlord remains at liberty to make any claim for damages that they may have, subject to any limitation dates. As the Tenant has been successful with their claim, I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$2,692.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$2,692.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: November 29, 2022

Residential Tenancy Branch