



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution by Direct Request, made on June 29, 2022. In a decision issued on August 10, 2022 and corrected on August 18, 2022, the matter was adjourned to a participatory hearing.

The Tenant applied for the following relief, pursuant to the Residential Tenancy Act (the Act):

- an order that the Landlord returns all or part of the security deposit; and
- an order granting recovery of the filing fee.

The Tenant attended the hearing and was accompanied by KF, who was also a tenant in the rental unit. However, KF was not named in the application. The Landlord was represented at the hearing by JR and CV, agents. All in attendance provided a solemn affirmation at the beginning of the hearing.

The Tenant testified that the Notice of Dispute Resolution Hearing package was served on the Landlord by registered mail on August 11, 2022. Copies of Canada Post registered mail receipts showing the date and time of purchase and including the tracking number were submitted in support. JR acknowledged receipt on behalf of the Landlord. Pursuant to sections 89 and 90 of the Act, I find these documents are deemed to have been received by the Landlord on August 16, 2022.

On behalf of the Landlord, JR testified that the documentary evidence upon which the Landlord relies was served on the Tenant by registered mail on November 28, 2022. In response to a question by the Tenant, JR confirmed the documents were sent to the address provided with the Tenant's application. The address was read aloud during the hearing and the Tenant confirmed the address was correct. In addition, JR provided a tracking number that has been reproduced above for ease of reference. The Canada Post website was consulted, and tracking information confirms these documents are available for pick-up. Although the Tenant denied receipt of the Landlord's documents, I find they were sufficiently served for the purposes of the Act, pursuant to section 71 of the Act.

No further issues were raised with respect to service or receipt of the above documents during the hearing. The parties were in attendance and were prepared to proceed.

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?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The parties agreed the tenancy began on May 1, 2021 and ended on February 28, 2022. As noted above, KF was named in the tenancy agreement but was not included as a party to this proceeding. JR and the Tenant confirmed that a security deposit of \$825.00 was paid and that only \$125.00 was returned at the end of the tenancy. A copy of the signed tenancy agreement was submitted into evidence.

The Tenant testified that he provided the Landlord with a forwarding address by email on June 8, 2022. A copy of the email to EM, an agent of the Landlord, was submitted into evidence and indicates that only \$125.00 had been returned to the Tenant. The email also included a forwarding address. The response dated June 9, 2022 states that \$700.00 was retained “due to the fines incurred as a result of the strata’s bylaw infraction during your tenancy”.

The Tenant also confirmed that a move-in condition inspection took place on April 30, 2021 and that a move-out condition inspection took place on February 22, 2022.

In response to the Tenant’s evidence, CV testified that the last page of the Condition Inspection Report indicates that KF authorized a deduction of \$700.00. On the last page of the Condition Inspection Report submitted by the Landlord, which was signed only by KF, the Landlord is authorized to retain \$700.00 from the security deposit held on account of “Strata Fines.”

Despite the signature of KF appearing on the Condition Inspection Report, KF testified that no deductions were permitted at the time the move-out condition inspection.

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.

However, section 38(4) of the Act states 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.

In this case, I find it is more likely than not that KF, a tenant, authorized a deduction of \$700.00 at the time of the move-out condition inspection and that the balance of \$125.00 was returned to the Tenant and KF at the end of the tenancy. Under the heading "Security Deposit Statement" found on the last page of the Condition Inspection Report the signature of KF appears below the following statement:

I agree with the amounts noted above and authorize deduction of the Balance Due Landlord from my Security Deposit and/or Pet Damage Deposits. If the total owing to the Landlord exceeds my deposit(s), I agree to pay the Landlord the excess amount.

There would have been no requirement to sign this section of the Condition Inspection Report if KF did not agree with a deduction. I do not accept the testimony of KF who testified that no deductions from the security deposit were authorized.

I also note that the Condition Inspection Report was provided in colour and does not appear to have been altered in any way.

Considering the above, I find there is insufficient evidence before me to grant the relief sought. Accordingly, 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: December 16, 2022

Residential Tenancy Branch