



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSDB-DR, FFT**

Introduction

This hearing dealt with an application by the tenants pursuant to the Residential Tenancy Act (“Act”) for orders as follows:

- An order returning the security and/or pet damage deposit held by the landlord pursuant to section 38 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

Landlord NA and tenants AW and ML appeared. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The landlord testified that the dispute notice and materials were sent to the wrong mailbox however he did receive the package. The tenants testified that they sent the dispute notice and evidence package by registered mail to an address that the landlord confirmed was correct. The landlord confirmed that despite the registered mail notice being delivered to the wrong address he did receive the package. Based on the testimony of the parties I find the landlord duly served in accordance with sections 88 and 89 of the Act.

The tenants did not dispute receipt of the landlord’s evidence and therefore I find they were served in accordance with section 88 of the Act.

The matter was adjourned from a direct request hearing on November 28, 2022 whereby the adjudicator directed the matter proceed to a participatory hearing as the

tenants did not provide proof of service of their forwarding address on the landlord in evidence. Proof of service of the forwarding address on the landlord has been provided in evidence in this hearing.

Issue(s) to be Decided

1. Is the tenant entitled to an order for return of the security deposit?
2. Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced September 14, 2018. Rent was \$1,900.00 per month due on the first of the month. The tenancy agreement was provided in evidence. The tenancy ended May 22, 2022.

The tenants stated they initially paid \$2,000.00 to the landlord in two payments, one of \$500.00 on September 8, 2018 and one of \$1500.00 on September 11, 2018. They understood those payments were attributed as \$950.00 for the first month's rent (one half of the month), \$950.00 for the security deposit, and \$100.00 for the pet deposit. The tenants provided the two e-transfer documents in evidence. The September 11, 2018 e-transfer is labelled security deposit and first month's rent.

The landlord stated that the tenancy agreement that was in evidence was the tenants' copy and his copy was stolen by the tenants when he was in the hospital.

The landlord's position is that the tenants did not pay a security deposit. The landlord testified that he had told the tenants that they had to pay rent for the entire month of September despite the tenants taking possession on September 14, 2018.

The landlord testified that he charged the tenants an application deposit of \$500.00 which he then applied to first month's rent. He stated that the September 8, 2018 \$500.00 e-transfer from the tenants was the application deposit. The requirement for the deposit is circled in red on the tenancy agreement. The \$500.00 deposit was then applied to the first month's rent.

The landlord stated that the total \$2,000.00 paid by the tenants in September was for the first month's rent of \$1,900.00 and the pet deposit of \$100.00. He testified that he made a mistake in his calculations and the tenants should have paid \$2,950.00 instead of \$2,000.00. He stated that he had an oral agreement with the tenants that they would

pay \$1,900.00 in rent for September, 2018 and then he would compensate them by reducing rent by \$100.00 per month as of October, 2018. He reduced the rent to \$1,800.00 on October 1, 2018 and did not increase the rent to \$1,900.00 until January 1, 2021.

The tenants testified that when they signed the lease the landlord stated to them that he would reduce the rent to \$1,800.00 because the rental unit was in poor condition and he liked the tenants. The rent reduction had nothing to do with the security deposit or the repayment of a rent overpayment.

The tenants stated that they provided the landlord a forwarding address in person on May 22, 2022 when they did the move out condition inspection. The tenants provided an RTB-41 form in evidence stating that they provided their forwarding address to the landlord at the move out inspection.

The tenants testified they then received an email from the landlord on May 28, 2022 which they provided in evidence. The email from the landlord itemizes damages done to the rental unit, and the tenants allege that this email related to the landlord's intention to retain the security deposit. The tenants sent a response email to the landlord on May 30, 2022 where they provided answers to the landlord's concerns. The tenants produced a copy of the email in evidence. The tenants then sent a letter dated Aug 4, 2022 to the landlord which they also provided in evidence. That letter also provided the forwarding address to the landlord.

The landlord testified that he did not file an application for dispute resolution in relation to the security deposit. The landlord also testified that although he has been a landlord for a long time, he did not really understand the rules for rentals.

Analysis

RTB Rules of Procedure 6.6 states, "The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. The onus in this case is on the tenants.

The tenancy agreement is in evidence. The tenancy agreement states that the tenants must pay a security deposit of \$950.00 and a pet deposit of \$100.00. Rent on the tenancy agreement is \$1,900.00 per month although both parties agree that the rent

paid by the tenants from October 2018 to January 1, 2021 was \$1,800.00 per month and then the rent as of January 1, 2021 was \$1,900.00.

The pet deposit is not in dispute, and I find that the tenants paid a \$100.00 pet deposit in September, 2018 that the landlord still holds.

With respect to the security deposit, I prefer the tenants' version of events and find that they paid a security deposit of \$950.00 in September 2018 for the following reasons:

- The tenancy agreement shows that the tenants are required to pay a security deposit of \$950.00.
- It is not reasonable to believe that the landlord accepted the pet deposit in September, 2018 but did not require the security deposit.
- The landlord provided no evidence that the rent reduction from October, 2018 to January 2021 was to compensate for rent paid for the entire month of September, 2018.
- If the rent reduction in October 2018 was done specifically to compensate the tenants for the rent overpayment, then the rent reduction should have only been for 9.5 months, as opposed to 15 months.
- The September 11, 2018 e-transfer receipt in evidence specifically states that the purpose of the e-transfer was for the security deposit and one half month's rent. At that point the landlord could have corrected the situation. He provided no evidence of doing so.
- The landlord testified that he is an experienced landlord, therefore it does not seem reasonable that he would have made a mistake in the total amount of money due from the tenants in September, 2018.

Section 38 of the Act states that within 15 days of receiving the tenants' forwarding address the landlord must either return the security and pet deposits or file an application for dispute resolution, failing to do this leads to the deposit being doubled per the *Act*. The tenants mailed the landlord their forwarding address on August 4, 2022, and under the Act he is deemed to have received the forwarding address on August 9, 2022. The landlord had until August 24, 2022 (15 days) to return the deposits or file an application. I find that the landlord did neither.

The tenants' application is granted and they are entitled to return of the double the amount of their security and pet damage deposits. As the tenants were successful in their application, they are also entitled to recover the filing fee for the application.

Conclusion

The tenants are granted a monetary order as follows:

Claim	Amount
Security Deposit (double)	\$1,900.00
Pet Deposit (double)	\$200.00
Filing Fee	\$100.00
Total	\$2,200.00

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: March 12, 2023

Residential Tenancy Branch