



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

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DECISION

Dispute Codes: MNSDB-DR, FFT

Introduction

The Tenant seeks the return of a \$750 security deposit and a \$750 pet damage deposit, pursuant to sections 38 and 67 of the *Residential Tenancy Act* (the “Act”). They also seek to recover the \$100 application fee pursuant to section 72 of the Act.

The Landlord made an application claiming against the Tenant’s security deposit on July 18, 2022. The Landlord withdrew their application on March 28, 2023. The file number for the Landlord’s withdrawn application is referenced on the cover page of this Decision.

Issues

1. Is the Tenant entitled to the return of their security and pet damage deposits?
2. Is the Tenant entitled to recover the cost of the application fee?

Evidence and Analysis

In this dispute, the applicant Tenant must prove their claim on a balance of probabilities (meaning “it is more likely than not to be true”). I have carefully considered the parties’ testimonies but only refer to the relevant information necessary to explain my decision.

The tenancy began December 31, 2019 and ended June 30, 2022. The Tenant paid a \$750 security deposit and a \$750 pet damage deposit.

Is the Tenant entitled to the return of their security and pet damage deposits?

The Tenant testified that they gave their forwarding address to the Landlord by email and regular mail in July 2022. They were not sure exactly when in July, however. The Tenant testified that the Landlord wanted to conduct a “pre-move out inspection” before the tenancy ended, but the Tenant declined. The Tenant testified that they did not provide any written consent for the Landlord to keep any of the deposit money.

The Landlord testified that they thought it was common practise to conduct an inspection before a tenant moved out. The Tenant was not interested in this type of inspection and instead videotaped the interior of the rental unit. The Landlord did not accept the videotaping as a replacement for the inspection. After the Tenant left, the Landlord found various damage, uncleanliness, and pet vomit. After an unsuccessful attempt to have the Tenant agree to let the Landlord keep \$350 of the security deposit, the Landlord filed their own application for dispute resolution.

Section 38(1) of the Act states 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.

In this dispute, the Tenant did not recall when they gave their forwarding address to the Landlord. Nor did they know whether the Landlord received the forwarding address in writing. It was most likely in early July 2022, however. And the Landlord made their own application for dispute resolution on July 18, 2022. That application was later withdrawn.

Because the Landlord withdrew their application claiming against any or all of the deposits there remains no legal right for the Landlord to continue to hold the deposits.

There is no evidence before me to find that the Landlord complied with section 35(2) of the Act in respect of their obligations regarding the condition inspection at the end of the tenancy. There is no legal obligation for a Tenant to attend a condition inspection *before* they have vacated the property. A condition inspection cannot occur until on or after the day a tenant ceases to occupy the rental unit (section 35(1) of the Act) and any such inspection may only occur when the rental unit is empty of the tenant's possessions (see section 14 of the *Residential Tenancy Regulation*). Accordingly, the Tenant is entitled to the full return of the \$750 security deposit and of the \$750 pet damage deposit.

Is the Tenant entitled to recover the cost of the application fee?

Since the Tenant succeeded in a return of their security deposit and the pet damage, they are entitled to recover the cost of the \$100 application fee.

Conclusion

For the reasons set out above the Tenant's application is granted.

The Landlord is ordered to pay \$1,600 to the Tenant. A monetary order is issued with this Decision to the Tenant, should enforcement of this payment order be necessary.

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: April 14, 2023

Residential Tenancy Branch