



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant on August 15, 2022, under the *Residential Tenancy Act* (the Act), seeking:

- The return of double the amount of their security deposit; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 1:30 pm on May 11, 2023, and was attended by the Tenant, an advocate for the Tenant IC (Advocate), a witness for the Tenant GT (Witness), and the Landlord. All testimony provided was affirmed. As the Landlord acknowledged service of the Notice of Dispute Resolution Proceeding (NODRP), and stated that there are no concerns regarding the service date or method, the hearing proceeded as scheduled. The parties were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The parties were advised that interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The parties were also advised that pursuant to the Rules of Procedure, personal recordings of the proceedings are prohibited, and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

Preliminary Matters

Although the Landlord acknowledged receipt of the Tenant's documentary evidence, the Tenant denied receipt of the Landlord's documentary evidence. Although the Landlord stated that their evidence, a one-page typed document, was emailed to the Tenant on May 4th or 5th of 2023, the Tenant denied receipt and the Landlord did not submit any documents for my consideration showing how or when this evidence was served. Further to this, the tenancy agreement does not indicate that the Tenant can be served at a pre-agreed email and the Tenant denied that there was ever an agreement to that affect.

As a result, I have excluded the Landlord's documentary evidence from consideration as I am not satisfied it was served on the Tenant as required.

Issue(s) to be Decided

Is the Tenant entitled to the return of double the amount of their security deposit?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The parties agreed to the following:

- The tenancy ended on May 31, 2022;
- The Tenant provided the Landlord with their forwarding address in writing on May 31, 2022;
- The Tenant paid a \$675.00 security deposit at the start of the tenancy;
- \$28.30 of the security deposit was returned to the Tenant by mail on June 8, 2022;
- The Landlord retained the remaining \$646.70 balance of the security deposit;
- No condition inspection reports were completed; and
- Sections 38(4) and 38(5) of the Act do not apply.

The Tenant sought the return of double the amount of their security deposit, plus interest, less the \$28.30 already returned, less \$21.70 the Tenant states that they permit the Landlord to retain for an unpaid hydro bill. The Tenant also sought recovery of the \$100.00 filing fee.

The Landlord stated that they retained \$646.70 from the Tenant's \$675.00 security deposit as the Tenant damaged doors and the washing machine, left garbage behind in the rental unit, and failed to pay a hydro bill in the amount of \$21.70. The Landlord stated that they also charged the Tenant a \$25.00 administration fee for the time and expense of returning the \$28.30 of the security deposit.

Analysis

Is the Tenant entitled to the return of double the amount of their security deposit?

As there is no evidence that the Tenant extinguished their right to the return of their security deposit, and the parties agreed that sections 38(4) and 38(5) do not apply, I find that the Landlord had until June 15, 2022, to either return the full \$675.00 security deposit to the Tenant, or file an Application for Dispute Resolution with the Residential Tenancy Branch (Branch) seeking retention of all or a portion of the deposit. The Landlord did neither.

In any event, I also find that the Landlord extinguished their right to retention of the security deposit at the start of the tenancy, pursuant to section 24(2)(c) of the Act, by failing to complete a move-in condition inspection report. I am also satisfied that the Landlord retained \$25.00 from the security deposit for an administration fee for returning the \$28.30 portion of the security deposit, contrary to section 5(c) of the regulation.

Pursuant to section 38(6) of the Act and Residential Tenancy Policy Guideline (Policy Guideline) #17, I find that the Tenant is entitled to \$1,309.25 broken down as follows:

- \$1,350.00 for the return of double the amount of their \$675.00 security deposit;
- less the \$28.30 already returned;
- plus \$9.25 in interest owed on the outstanding balance of \$1,321.70 between January 1, 2023 – May 11, 2023;
- less the \$21.70 the Tenant has now agreed is owed to pay an outstanding hydro bill.

The Landlord remains entitled to file an Application for Dispute Resolution seeking compensation from the Tenant for damage, cleaning costs, and other monetary compensation owed, should they believe they are entitled to the recovery of such amounts.

Is the Tenant entitled to recovery of the filing fee?

As I have granted the Tenant's Application, I also award them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act.

Conclusion

Pursuant to section 67 of the Act, I grant the Tenant a monetary order in the amount of **\$1,309.25**, and I order the Landlord to pay this amount to the Tenant. The Tenant is provided with this order in the above terms and the Landlord must be served with this order as soon as possible. Should the Landlord fail to comply with this order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: May 11, 2023

Residential Tenancy Branch