



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

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 February 8, 2023, pursuant to section 38.1 of the Residential Tenancy Act (the Act). In an Interim Decision dated March 28, 2023, and a Clarification Decision dated March 31, 2023, the matter was adjourned to a participatory hearing.

The Tenant applies for the following relief, pursuant to the Act:

- a monetary order for the return of the security deposit; and
- an order granting recovery of the filing fee.

At the beginning of the hearing, the parties agreed to amend the name of the Landlord to reflect the corporate Landlord named in the tenancy agreement, rather than the names of the Landlord's agents. I amend the application accordingly, pursuant to section 64(3) of the Act.

The Tenant attended the hearing on his own behalf. The Landlord was represented at the hearing by EB and DC. All in attendance provided a solemn affirmation.

The Tenant testified the Notice of Dispute Resolution Proceeding package was served on the Landlord by email. EB acknowledged receipt of these documents.

On behalf of the Landlord, EB testified that the Landlord's documentary evidence was served on the Tenant by registered mail. The Tenant acknowledged receipt of these documents.

No issues were raised during the hearing with respect to service or receipt of the above documents. The parties were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the Act, I find these documents were sufficiently served for the purposes of the Act.

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 and to which I was referred. 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 the return of a security deposit?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The parties agreed the tenancy began on October 4, 2021, and ended on December 31, 2022 (although the Tenant moved out on December 19, 2022). During the tenancy, rent of \$2,040.00 per month was due on the first day of each month. The parties agreed the Tenant paid a security deposit of \$995.00. A copy of the signed tenancy agreement was submitted into evidence.

The Tenant testified that the Landlord was given a forwarding address by email on January 16, 2023. On behalf of the Landlord, EB acknowledged receipt of the Tenant's forwarding address on January 18, 2023.

The parties agreed that the Landlord returned only \$68.75 to the Tenant. The Landlord testified that the balance was retained on account of damage to the bathroom caulking and grout. EB confirmed the Landlord did not apply for dispute resolution in relation to the damage. Rather, EB referred to the move-out condition inspection report, signed by the Tenant, in which the Tenant agreed the report fairly represented the condition of the rental unit and agreed to permit the Landlord to retain the security deposit.

In reply, the Teant acknowledged that his signature on the move-out condition inspection report is legally binding. However, he testified that he did not understand the document and said he thought it was a requirement to sign it so he could hand over the keys and end the tenancy. The Tenant also questioned the relationship between the Landlord and the contractor used to perform repairs. In response, EB testified the contractor is a third party.

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 confirms a landlord may retain an amount from a security deposit if 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 the Tenant is not entitled to the relief sought. As noted in the move-out condition inspection report, the Tenant agreed the report fairly represented the condition of the rental unit and agreed in writing that the Landlord could retain the security deposit. I note the Landlord returned the unused portion of the security deposit to the Tenant.

Considering the above, I find 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: September 15, 2023

Residential Tenancy Branch