

## **DECISION**

### **Introduction**

This hearing dealt with the Landlord's Requested Review of an April 24, 2024, Direct Request Decision that provided the Tenant with a Monetary Order for the return of their security deposit.

The Landlord was provided with a Review Decision dated May 6, 2024, regarding what must happen for formal findings to be offered on their Review Request in accordance with RTB Policy Guideline 24 and section 82 of the Act.

### **Service of Notice of Evidence**

The Landlord was given the following instructions in the May 6, 2024, Decision:

Within 3 days after receiving this decision, the Landlord must give to the Tenant:

- this decision
- their review consideration application
- the evidence they submitted to the Residential Tenancy Branch to support their review consideration application

The Landlord must give this decision, application and evidence to the Tenant. It must be given to the Tenant the same way they would give a notice of dispute resolution, e.g., registered mail, or when agreed to in advance, email.

The Landlord must not add new evidence; only evidence that has been provided with the review consideration application will be considered.

The Landlord must provide proof to the Residential Tenancy Branch of how and when they gave the Tenant this decision, their application and evidence, e.g., details of registered mail, copy of email.

The Landlord's proof of how and when they gave this decision and the review application to the Tenant must be received by the Residential Tenancy Branch by May 14, 2024.

I reviewed the file on May 23, 2024, and find that the Landlord:

- Served the Tenant on May 7, 2024, by registered mail as is permitted by section 89 of the Act.
- Provided proof of tracking
- I reviewed the tracking and confirmed that:
  - It was sent to the address as provided by the Tenant
  - It was collected by the Tenant on May 18, 2024

I therefore find that the Landlord served the Tenant as required by the Act and that I can proceed to arbitrate the Landlord's request in accordance with RTB Policy Guideline 24.

## **Analysis**

As shown in the May 6, 2024, Review Decision, the Landlord submitted the following evidence to argue that they are not required to return the Tenant's security deposit:

- Quote for \$1,700.00 replacement of a quartz counter top
- A written mutual agreement to end tenancy dated June 22, 2023
- Text message conversation said to be between Landlord's wife and Tenant on Jun 12, 2023, where the Tenant acknowledges damaging the countertop with willingness to pay for damage
- A picture of a significantly cracked quartz countertop
- A July 1, 2023, letter to Tenant for damages, said to be signed by Tenant, authorizing the LL to retain the full value of the Tenant's deposit against damage

I reviewed the Tenant's copy of their Direct Request Worksheet and find that the Landlord extinguished their right to retain the deposit under section 24 of the Act because:

- The Tenant claimed that no move-in condition inspection was conducted and
- That no move in condition inspection was provided
- The Landlord did not provide any evidence related to a move in condition inspection or a move-in condition inspection report.

In sum, I find, under 38(5) of the Act, that the Landlord is not entitled to retain the Tenant's despite, despite the Tenant putting in writing on July 1, 2023, that they consent to the Landlord retaining the deposit.

Furthermore, I find that there is no evidence that the Tenant obtained the April 24, 2024, Decision and Monetary Order by fraud because the I reviewed the Tenant's materials relating to the April 24, 2024, Decision and find that:

- The Tenant also included proof of a July 1, 2023, letter from the Landlord regarding damages at the residential property.
- The Landlord's copy of this document is signed by both parties.
- The Tenant's copy of the document is only signed by the Landlord.
- The Tenant confirmed that a move-out condition inspection was conducted.

I find that the Tenant did not attempt to hide that damage occurred, or that there had been interactions with the Landlord regarding the damage.

In sum, I uphold the original Decision and Monetary Order because I dismiss the Landlord's request for a review under 82(2)(a) of the Act due to their failure to conduct and provide evidence of a move-in condition inspection and move in condition inspection report as required by 38(5) of the Act.

## **Conclusion**

The April 24, 2024, Decision is confirmed under 82(3) of the Act.

The April 24, 2024, Monetary Order is confirmed under 82(3) of the Act.

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: May 23, 2024

---

Residential Tenancy Branch