



## **DECISION**

### **Introduction**

This hearing dealt with two applications pursuant to the Residential Tenancy Act (Act). The Landlords' application for:

- a Monetary Order of \$100.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

And the Tenants' application for:

- Return of security deposit and pet damage deposit in the total amount of \$2,700.00 that the Landlords are retaining without cause
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Those listed on the cover page of this decision attended the hearing and were affirmed.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence**

As both parties confirmed service of the Proceeding Package, I find both parties were served with the required materials.

The Tenant testified that they did not receive documentary evidence from the Landlord.

The Landlord testified that they served to the Tenant the Proceeding Package and documentary evidence via email, as the Tenant provided their email as the address of service on the RTB-47 form submitted by them.

The Landlord attached a copy of the outgoing email sent to the Tenant, which shows the attachment of a Proceeding Package and no attachments for documentary evidence.

Based on the above, the Landlord's documentary evidence was excluded in full as there was no proof of service.

## **Preliminary Matters**

At the outset of the hearing the Tenant provided the correct spelling of their surname. The Landlord agreed with the correction provided.

Based on the testimony of the parties and as per Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 7.12, I amended the Landlord's application to include the correct surname of the Tenant.

As another preliminary matter, the Landlord clarified that they are seeking the return of their filing fee in the amount of \$100.00, instead of the \$200.00 claim listed on their application for dispute resolution.

Based on the above and as per the details of the Landlord's application for dispute resolution, I find they erred in claiming the cost of \$100.00 for the filing fee as a duplicate amount for the total amount of \$200.00. I accepted the lowered claim in the total amount of \$100.00.

## **Issue(s) to be Decided**

Is the Tenant entitled to the return of the security deposit and pet damage deposit that the Landlord is retaining without cause?

Is the Tenant entitled to recover the filing fee?

Is the Landlord entitled to recover the filing fee?

## **Background and Evidence**

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Both parties agreed that this tenancy started in June 2023, and ended on September 30, 2024. The parties agreed that on September 30, 2024, they participated in a move out walk through of the rental unit. A tenancy was in place based on a verbal agreement, and there was no signed tenancy agreement between the parties.

The Landlord testified that at the outset of the tenancy, the parties negotiated monthly rent of \$2,800.00, however, the Tenant paid \$2,700.00 per month throughout the tenancy. The Tenant testified that at the outset of the tenancy the parties agreed upon monthly rent of \$2,700.00.

The Landlord testified that they did not receive a security deposit payment or pet damage deposit from the Tenant. The Landlord testified that they kept record of all payments from the Tenant. The Landlord stated that their banking records confirm payment of rent via e-transfer transactions, but no security deposit payment or pet damage deposit payment. The Landlord testified that they follow the practice of issuing receipts for cash payments.

The Tenant testified that on June 23, 2023, they met the Landlord in person and paid to them in cash the amount of \$2,700.00 for the security deposit and the pet damage deposit.

The Tenant testified that despite their request, they were not provided with a written tenancy agreement. The Tenant testified that the Landlord did not provide receipts for monthly rent payments or for the payment of the security deposit and pet damage deposit.

Tenant DC testified that they received cash in the amount of \$2,700.00 as an advance for a tiling job they completed for customer KT in June 2023. DC testified that in June 2023 Tenant LC gave the cash amount of \$2,700.00 to Landlord WC as payment for the security deposit and the pet damage deposit.

The Tenant testified that at the end of August 2024, they provided to the Landlord their notice to end tenancy and their forwarding address in writing for the return of the security deposit and pet damage deposit. The Tenant testified that on November 11, 2024, they provided via registered mail to the Landlord their Tenant's Notice of Forwarding Address for the Return of Security and Pet Damage Deposit (#RTB-47 Form).

The Tenant submitted the following as part of their documentary evidence:

- Message from KT. The Tenant testified that on December 7, 2024, they received this message from KT
- Witness Statement from Tenant DC
- RTB-47 Form
- RTB-41 form, Proof of Service, Tenant Forwarding Address for the Return of Security and Pet Damage Deposit

## **Analysis**

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, which is more likely than not, I find the following:

**Is the Tenant entitled to the return of the security deposit and pet damage deposit that the Landlord is retaining without cause?**

I find the Tenant did not establish their claim for the return of a security deposit and pet damage deposit.

I find there is insufficient evidence before me to conclude that the Tenant paid to the Landlord a security deposit and pet damage deposit in the total amount of \$2,700.00. If such payment were made, I would expect the Tenant to provide documentation to support their claim, such as bank statements or receipts for cash transactions.

In this case, I find the Tenant did not provide sufficient documentation, such as a receipt, to support the cash transaction between customer KT and them. I place minimal weight on the message from customer KT given it is not dated and does not confirm the cash transaction between them and the Tenant.

The Tenant relied on one cash transaction, between customer KT and them, to support payment of the subsequent cash transaction between them and the Landlord. I find there is insufficient evidence to prove the transaction between customer KT and the Tenant, or any payment from the Tenant to the Landlord. Based on the evidence before me, and on a balance of probabilities, I find it more likely than not that a security deposit and pet damage deposit were not paid at the start of the tenancy.

For the reasons noted above, I dismiss the Tenant's application for the return of the security deposit and pet damage deposit that the Landlord is retaining without cause.

**Is the Tenant entitled to recover the filing fee?**

As the Tenant's application was not successful, the Tenant is not entitled to recovery of the \$100.00 filing fee for the cost of this application.

**Is the Landlord entitled to recover the filing fee?**

The Landlord acknowledged that they filed their application as a pre-emptive measure.

The decision to order payment of the filing fee is discretionary upon the arbitrator and in accordance with section 72 of the *Act*, the filing fee will not be recovered.

**Conclusion**

The Landlord's application is dismissed in its entirety, without leave to reapply.

The Tenant's application is dismissed in its entirety, 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 Act.

Dated: January 28, 2025

---

Residential Tenancy Branch