



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, FFT

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order for the return of personal property.
- b. A monetary order in the sum of \$3800.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord as the landlord acknowledged service. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order for the return of personal property?
- b. Whether the tenant is entitled to a monetary order and if so how much?

Background and Evidence:

The landlord entered into a written tenancy agreement with the Applicant and RY that provided that the tenancy would start on April 1, 2018 and continue on a month to month basis. The rent was \$1900 per month payable in advance on first day of each month. The Applicant paid \$500 and RY paid \$450 of the security deposit for a total of \$950.

On May 4, 2018 RY texted the landlord stating he could no longer live with the Applicant and that he was vacating at the end of May. RY vacated the rental unit prior to the end of May 2018.

On June 1, 2018 the Applicant sent a text message to the landlord stating he was leaving at the end of June even though he did not want to but because he was unable to find another roommate and the rent was too high for him to pay on his own.

The tenant found another rental unit which allowed him to start moving out on June 15, 2018. The tenancy ended on June 30, 2018.

The tenant(s) provided the landlord with his/her their forwarding address in writing on July 5, 2018 as it was posted to the landlord's rental unit. It is deemed received 3 days later.

The landlord returned \$400 of the security deposit to the Tenant on July 6, 2018. The landlord stated they were retaining \$100 to cover cleaning costs and \$450 for the share of the security deposit that should be paid to RY. .

Law

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

Analysis

The tenant(s) paid a security deposit of \$950 at the start of the tenancy. I determined the tenancy ended on June 30, 2018. I further determined the tenants provided the landlord with their forwarding address in writing on July 5, 2018 by posting on the door to the rental unit. The Act provides that it is deemed received 3 days later. . The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenants and the landlord failed to file an Application for Dispute Resolution within the 15 days from the later of the end of tenancy or the date the landlord receives the tenants' forwarding address in writing. The landlord returned \$400 of the security deposit on July 6, 2018.

Policy Guideline #13 includes the following:

“A security deposit or a pet damage deposit¹ is paid in respect of a particular tenancy agreement. Regardless of who paid the deposit, any tenant who is a party to the tenancy agreement to which the deposit applies may agree in writing to allow the landlord to keep all or part of the deposit for unpaid rent or damages, or may apply for arbitration for return of the deposit²

I determined the Applicant is entitled to an order for the doubling of the amount of the security deposit held by the landlord at the time the 15 day period ended. Thus the tenant is entitled to $\$550 \times 2 = \1100 . I do not accept the submission of the landlord that she can unilaterally withhold a portion of the security deposit without the tenant's consent and without an order from an arbitrator permitting this. Further, the Policy Guideline provides that any one of the co-tenants can apply for arbitration for the return of the deposit.

The landlord still retains the right to file a claim for the cost of cleaning and loss of rent if the landlord takes the position that inadequate notice was given.

I dismissed the Tenant's claim for reimbursement of the rent for June in the sum of \$1900. The tenant testified the landlord limited access of guests and thus forced him to leave. I determined there is no basis an order for reimbursement of the rent. The tenancy was ongoing and the tenant had the use of the rental unit for the month of June. I ordered that this claim be dismissed.

I dismissed the claim for an order for the return of personal property as the tenant failed to provide evidence that the landlord has the tenant's personal property.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$1100.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on both parties.

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: November 30, 2018

Residential Tenancy Branch