



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for the return of double their \$1,137.50 security deposit and their \$1,137.50 pet damage deposit; and to recover their \$100.00 Application filing fee.

The Tenants and an agent for the Landlord, L.S. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Tenants provided the Parties' email addresses in the Application, and they confirmed them in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order, and if so, in what amount?
- Are the Tenants entitled to Recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on August 15, 2019, ran to July 31, 2020, and then operated on a periodic basis. They agreed the tenancy agreement required the Tenants to pay the Landlord a monthly rent of \$2,275.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$1,137.50, and a pet damage deposit of \$1,137.50 ("Deposits"). They agreed that the Tenants vacated the rental unit on January 31, 2022. Further, the Parties agreed that the Tenants provided the Landlord with their forwarding address in their notice to end the tenancy, which was provided prior to them vacating the rental unit.

In the hearing, the Tenants explained their claim, as follows:

The tenancy terminated on January 31, 2022, with our notice of the tenancy end, which included our forwarding address and contact information, including our etransfer information. The Landlord acknowledged receipt of this – see number three of our initial filing. The tenancy terminated, and they had our forwarding information. Under section 38 (1), the Landlord had 15 days to return it, but no deposit or application was received. We initiated this process. The original amount was returned on March 19 – after Notice of Hearing documents were received from the Landlord.

The Tenants submitted a copy of a text communication between the Parties, which included the Agent saying: "Happy new year. [Tenant]. I received your letter for end of tenancy. How is house condition?"

The Agent said that his father passed away on January 18, 2022, which caused the Agent sadness and busyness, arranging for the funeral service. The Agent said:

So, I was very busy and sad. I was very stressed out, so that is another thing. The owner was my father. I sent these details to [the Tenant], as well, and to the RTB – hand delivered.

All this is because, financially, the owner passed away, so it delayed the process of paying the deposit back. I tried to contact [the Tenant], and never got an

answer. Usually, when I receive the pet damage deposit I sign it, but this is blank.

I didn't discover - I can't remember if they paid the pet damage deposit; I cannot find the record. Since it was delayed, I thought I'd pay the full amount and sort this out later in good faith.

I don't think [the Tenant] made this claim in good faith. I contacted him and tried to sort it out, but there was no answer, no text to me - he gave me the impression that he was reluctant to pay those deposits. So, after 2½ years, I really couldn't track it. And he didn't show that he paid. At that time also, I was so busy and so sad; on February 8th we had my father's service. This is my father's property.

The Agent provided evidence of his father's death and funeral service in his evidentiary submissions.

The Tenant responded:

Starting with the January – February claim, I don't want to say it's an outright fabrication, but it was a fabrication. See on page 10 of our filing – February 23rd was the first communication. All other communications was him trying to schedule showings about the house and asking questions about the property. While I'm sympathetic, I don't think it's my responsibility to be the Landlord's bookkeeper, if he contacted us before 8 days after it was due....

Good faith? I don't think there was a good faith effort to return the deposit on time. The Landlord knew that at least \$1,137.50 was due on February 15th and that wasn't paid either. If there were communications before the filing, we may have worked something out, but once I had paid the fees for the dispute resolution ... here we are.

The Agent submitted a text he sent to the Tenant on February 23rd, saying [reproduced as written]:

Hi [Tenant], I wish you well. I just about to return your deposit. I knew you paid damage deposit, on July 15, 2019, but when you move in on August 15, 2019, did you paid pet damage deposit?

The Agent also submitted a copy of an etransfer showing that he paid the Tenant \$2,275.00 on March 19, 2022. The Tenants did not deny receipt of this payment.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 38 of the Act states that a landlord must do one of two things at the end of the tenancy. Within 15 days of the later of the end of the tenancy and receiving the tenant's forwarding address in writing, the landlord must: (i) repay any security deposit and/or pet damage deposit; or (ii) apply for dispute resolution claiming against the security deposit and/or pet damage deposit. If the landlord does not do one of these actions within this timeframe, the landlord is liable to pay double the security and/or pet damage deposit(s) pursuant to section 38 (6) of the Act.

The Landlord was required by the Act to return the Deposits within fifteen days after January 31, 2022, the end of the tenancy. I find that the forwarding address had been provided to the Landlord in writing prior to that date. As such, the Landlord was required to return the Deposits by February 15, 2022, or to apply for dispute resolution to claim against the Deposits, pursuant to section 38 (1). The Agent provided evidence that he returned the Deposits in full on March 19, 2022, which is deemed received by the Regulation three days later, on March 22, 2022. Therefore, I find the Landlord failed to comply with their obligations under section 38 (1).

However, section 66 (1) of the Act states that the director may extend a time limit established by this Act in exceptional circumstances. Based on the evidence before me overall, I find that the Landlord's death on January 18, 2022, was such an exceptional circumstance, and I find that the Agent was too pre-occupied with grief and with arranging his father's funeral in January and February 2022 to attend to returning the Deposits pursuant to the Act. Accordingly, and pursuant to section 66 of the Act, I extend the time limit established in section 38 to March 22, 2022 - the date on which the Deposits were deemed received by the Tenants.

Accordingly, I find that the Tenants have received their Deposits back pursuant to the Act, and therefore, I dismiss their Application wholly without leave to reapply.

Conclusion

The Tenants are unsuccessful in their Application for the return of double the security and pet damage deposits. The Landlord's death on January 18, 2022, was an exceptional circumstance that prevented the Agent from returning the Deposits pursuant

to section 38 of the Act. However, pursuant to section 66 of the Act, I have extended the time in which the Agent was allowed to return the Deposits to March 22, 2022, which I find is reasonable in the circumstances.

The Tenants' Application is dismissed wholly 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: November 4, 2022

Residential Tenancy Branch