

IN THE MATTER between **RR**, Applicant, and **PD**, Respondent.

AND IN THE MATTER of the Residential Tenancies Act R.S.N.W.T. 1988, Chapter R-5 (the "Act");

AND IN THE MATTER of a hearing before Janice Laycock, Rental Officer,

BETWEEN:

RR

Applicant/Tenant

-and-

PD

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: April 22, 2020

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: RR, Applicant

BF, representing the Respondent

Date of Decision: April 22, 2020

REASONS FOR DECISION

An application to a rental officer made by RR as the Applicant/Tenant against PD as the Respondent/Landlord was filed by the Rental Office on March 6, 2020. The application was made regarding a residential tenancy agreement for rental premises located in Yellowknife, Northwest Territories. The filed application was sent to the Respondent by email, deemed served on April 17, 2020.

The Applicant claimed the Respondent had not returned the balance owing of their security deposit. An order was sought for the return of the security deposit.

A hearing was held April 22, 2020 in Yellowknife by three-way teleconference. RR appeared as the Applicant. BF appeared as the representative for the Respondent.

Preliminary matters

At the hearing it was clarified that the official name of the Landlord is "PD" and not "PD (GD/BF)" as set out in the application. Going forward, the style of cause for this matter will be RR v. PD.

Additional documents were provided by the Respondent to the Rental Office on April 21, 2020. Although the Applicant was sent a copy of the documents by email, they testified that they did not receive the documents and the hearing proceeded without this evidence.

Tenancy agreement

The Applicant testified that they had a tenancy agreement with the Respondent that began on July 1, 2016, and was terminated by agreement on February 24, 2020. The representative for the Respondent agreed that there was a tenancy agreement for that period and that they had rented the unit again on March 1, 2020. I am satisfied that a valid tenancy agreement was in place and that the tenancy was terminated on February 24, 2020, in accordance with the *Residential Tenancies Act* (the Act).

Rental arrears

Based on the evidence provided, there was an agreement between the Applicant and the Respondent to prorate February's rent and charge only for the period from February 1st to 24th. The revised rent for February 2020, agreed to by the Applicant and the Respondent, was \$1,545.95.

Security deposit

The Applicant had previously provided a cheque for the full month's rent for February. The Applicant notified the Landlord that they had cancelled the cheque and had asked them to take the rent owing (\$1,545.95) out of the security deposit. In their email response (included as evidence) the Respondent said, "We are agreeable to your suggestion and will get back to you once February rent is processed." The Applicant testified that they assumed that this meant the Landlord agreed with their proposal and the Applicant would receive the remainder of the security deposit back after the rental arrears were deducted.

At the hearing the representative for the Respondent testified that this only meant agreement to the prorated rent for February and not to the request to take it out of the security deposit. They understood that the Applicant would either honour their cheque or provide a new cheque for the amount owing.

In their statement at the hearing the representative for the Respondent testified that because they felt the Applicant misrepresented their reasons for terminating the tenancy agreement early, they had decided to charge full rent for the month of February. They also stated that they were advised by the Rental Office that they did not have to apply the security deposit against the last month's rent.

On March 2, 2020, a "Closing Statement of Account" was provided by the Respondent to the Applicant's representative as required under subsection 18(8) of the Act. This statement included the following:

Original Security Deposit:	\$1,779.00
Add Accumulated Interest:	3.19
Less February Rent Arrears:	(1,868.00)
Less February Parking Arrears:	(80.00)
Less NSF Charge:	<u>(50.00)</u>
Balance owing from tenant:	<u><u>(\$215.81)</u></u>

On March 6th the Applicant replied by email to the Respondent, forwarding their response to the Rental Office. In their email the Applicant claimed that \$236.24 was owed to them from the security deposit, that rent for February was \$1,545.95, that parking had been cancelled for February based on email correspondence with the Respondent, and the Respondent had notice that the cheque was cancelled and should not have attempted to cash it.

After considering the evidence provided and the testimony of the Applicant and the representative for the Respondent, I find the following:

- ▶ The Applicant paid a security deposit on July 5, 2016, of \$1,779 (Note: the date is based on the statement provided by the Applicant from Simplii Financial which shows a cheque effective July 5, 2016);
- ▶ The Calculation of interest on the security deposit is \$3.17;
- ▶ The rent for February was agreed to by both parties as \$1,545.95 and I believe this should stand;
- ▶ Although \$80 for parking could be included as rent, the Applicant testified that parking for February had been waived by the Landlord. The representative for the Respondent was not able to refute this agreement, so I have not included this in the amount owing;
- ▶ The Respondent was notified by the Applicant that the rent cheque for February 2020 had been cancelled, but they elected to try to cash it anyway. I do not accept the NSF charge of \$50.00.

In conclusion, I find the Applicant is entitled to a remaining security deposit credit of \$236.22, calculated as follows:

Security Deposit:	\$1,779.00
Plus Interest:	<u>3.17</u>
Sub-total:	\$1,782.17
Less February Rent	1,545.95
Security Deposit Credit:	<u><u>\$236.22</u></u>

Order

An Order will be issued requiring the Respondent to pay to the Applicant the remainder of their security deposit totalling \$236.22 (p. 18.1(b)).

Janice Laycock
Rental Officer