



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's application for return of double the security deposit, interest on the security deposit and recovery of the filing fee. Both parties were represented at the hearing. Both parties had an opportunity to be heard and respond to other party's submissions.

Issue(s) to be Decided

1. Whether the landlord had the legal right to retain the tenant's security deposit.
2. Whether the landlord is obligated to pay the tenant double the security deposit.
3. Award of the filing fee.

Background and Evidence

Upon hearing undisputed testimony of the parties, I find the following relevant facts concerning the tenancy. The fixed term tenancy commenced August 15, 2008 and the tenant had paid a \$700.00 security deposit on August 14, 2008. The parties agreed the tenant would do the move-in inspection and report without the landlord present. The tenant gave the landlord notification she would be vacating the rental unit effective November 13, 2009 and the parties had telephone communication with respect to the tenant moving out. The tenant provided her forwarding address to the landlord in writing on November 5, 2008. The tenant removed her possessions from the rental unit on November 13, 2009 and the keys were returned to the landlord November 29, 2008. The tenant paid rent for the month of November 2008. The tenant provided her forwarding address again to the landlord via an email dated December 22, 2009. The tenant was provided a copy of the inspection report by mail in February 2009, the tenant signed it and indicated she did not agree with the landlord's findings. The landlord did

the move-out inspection without the tenant present. The tenant did not agree in writing that the landlord could retain all or a portion of the tenant's security deposit.

The parties were in dispute as to when the tenant was provided a copy of the move-in inspection report. The parties were in dispute as to whether the tenant had verbally agreed to pay for certain damages to the rental unit.

Analysis

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*.

As the parties were informed during the hearing, the landlord's claims for damages were not issues for me to decide for this proceeding as the landlord had not made an application for dispute resolution. The purpose of this hearing was to hear the tenant's application for dispute resolution and determine whether the landlord complied with the Act with respect to returning the security deposit. The landlord is at liberty to make a separate application for damages.

I do not find that the tenant extinguished her right to return of the security deposit. It is the landlord's responsibility to offer the tenant at least two opportunities to participate in a move-out inspection with the landlord when the rental unit is vacant in a manner that complies with the Residential Tenancy Regulations. Upon hearing the testimony of the parties and upon reviewing the evidence, I am satisfied the landlord did not provide the tenant with such an opportunity.

Section 38 of the Act provides for the return of security deposits. The Act permits a landlord to obtain a tenant's written consent for deductions for damages if the landlord

meets all the requirements for move-in and move-out inspection reports. In this case I not satisfied the landlord met the inspection requirements and even if the landlord had met the inspection requirements, the landlord did not have the tenant's written consent to withhold the security deposit. Verbal agreement to make deductions from a security deposit, if there was such an agreement in this case, not sufficient. Therefore, the landlord did not have the legal right to retain the tenant's security deposit.

Where the landlord does not have the legal right to retain all or a part of a security deposit, section 38(1) requires the landlord to either return the security deposit to the tenant, with interest, or make an application for dispute resolution claiming against the security deposit within 15 days from the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing.

A tenancy ends when a tenant vacates a rental unit. I heard from the tenant she vacated November 13, 2009; however, the landlord claimed the tenant did not return the keys until November 29, 2009. A tenant is required to return keys to the landlord at the end of a tenancy. Therefore, I find that the tenancy ended November 29, 2009.

As I am satisfied the tenant gave her forwarding address to the landlord in writing on November 5, 2009 the later of these two dates is November 29, 2009 and the landlord had until December 14, 2008 to either return the security deposit to the tenant or apply to retain it by making an application for dispute resolution in accordance with the requirements of section 38(1). Since the landlord did not comply with section 38(1) of the Act and the landlord must now pay the tenant double the security deposit pursuant to section 38(6) of the Act.

In summary, the landlord did not have the legal right to retain the tenant's security deposit and the tenant has established an entitlement to return of double the security



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deposit, interest on the original deposit and I award the filing fee paid for making this application to the tenant. Therefore, the tenant's claim for \$1,454.20 is approved and I provide the tenant with a Monetary Order in that amount. The tenant must serve the enclosed Monetary Order upon the landlord and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Dated: July 10, 2009.

Dispute Resolution Officer