



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 an Application for Dispute Resolution by the landlord for an Order to keep all or part of the security deposit and a Monetary Order to recover the filing fee.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and were sent to the tenant by registered mail on August 18, 2009.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Is the landlord entitled to keep all or part of the security deposit and interest?
- Is the landlord entitled to recover filing fees from the tenant for the cost of the application?

Background and Evidence

Both parties agree that the tenancy started on July 18, 2008 and ended at the end of the fixed term on July 31, 2009. The tenant paid \$850.00 per month in rent plus utilities.

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Rent was due on the 1st of each month. The tenant paid a security deposit of \$425.00 and a pet damage deposit of \$425.00 on July 07, 2008. The tenant gave her forwarding address in writing to the landlord on June 30, 2009. The landlord and tenant conducted a move in and move out condition inspection of the rental unit at the beginning and end of the tenancy.

The landlords' agent testifies that the tenant owes utilities to the amount of \$47.70. The landlords' agent also claims that the landlord incurred additional costs to remove a garden chair that belonged to the tenant at a cost of \$85.00. The landlord seeks to retain these amounts from the tenants' security deposit.

The tenant testifies that on the day she moved from the rental unit she asked for a copy of her final utility bill. The landlords' agent did not have this as the landlord was away at the time. The tenant testifies that she did not receive a copy of this bill until October 23 when it was forwarded to her as part of the landlords' evidence. The tenant claims she has always been willing to pay this bill and has been waiting for the landlord to provide her with the bill.

The tenant testifies that the garden chair did not belong to her and she has no knowledge of it. When she vacated the rental unit she removed all of her belongings. The tenant questions the receipt the landlord has produced for the removal of this chair as the date on the receipt shows it was removed in 2008 not 2009.

The tenant testifies that the landlord has not returned her security or pet damage deposit to her. She agrees that the landlord may keep \$47.70 from her deposit for the outstanding utility bill and requests the return of double her security and pet damage deposit.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. I find the tenant did ask the landlord for a copy of the utility bill on the day she moved from the rental unit and this bill was not provided to her until October 23, 2009. The tenant has agreed that the landlord may deduct this amount from her security deposit.

I find the landlord did not provide the tenant with a copy of the utility bill at the end of her tenancy and therefore could not have expected her to make a payment for this bill until she had received a copy of it. Therefore, I find the landlord must bear the cost of filing their own application.

I find there is no evidence to support the landlords' claim that the garden chair belonged to the tenant and the receipt provided to remove the chair has been dated in 2008. Therefore, I dismiss this section of the landlords claim without leave to reapply.

The tenant has requested that the landlord return her security and pet damage deposit. I find she gave the landlord her forwarding address in writing on June 30, 2009 and the tenancy ended on July 31, 2009. The landlord had 15 days from the end of the tenancy to return the tenants security and pet damage deposit or apply for Dispute Resolution to keep it pursuant to section 38(1) of the *Act*. I find the landlord did make an application on August 13, 2009 to keep part of the tenants' security deposit for an outstanding utility bill and this was in the allowable 15 day time period. However, because the landlord did not provide the tenant with the utility bill until October 23, 2009 I find the tenant is entitled to recover double the amount of her security and pet damage deposit plus accrued interest. The amount of the utility bill will be deducted from her deposit.

Double the security and pet damage deposits	\$1,700.00
Less outstanding utility bill	(-\$47.70)
Total amount of security and pet damage deposit to be returned to the tenant	\$1,658.50

Conclusion

I find that the landlord is entitled to recover the \$47.70 for the outstanding utility bill. I order that the landlord retain this amount from the security deposit as detailed above

The remainder of the landlords' application is dismissed without leave to reapply.

I further Order the landlord to return double the tenants security and pet damage deposit to the tenant to an amount of **\$1,658.50** pursuant to section 38(6)(b) of the *Act*. A Monetary Order has been issued to the tenant. The order must be served on the landlord and is enforceable through the Provincial Court as an order of that Court.

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 04, 2009.

Dispute Resolution Officer