



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, O, FF

Introduction

This matter dealt with an application by the tenant for the return of her security deposit, other issues and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was sent by registered mail to the landlord on June 09, 2010.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, documentary form, 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 tenant entitled to the return of her security deposit?

Background and Evidence

Both Parties agree that this tenancy started on November 01, 2009. This was a fixed term tenancy which was due to expire on October 31, 2010. The tenant paid a security deposit of \$590.00 on October 26, 2010. The tenant paid a monthly rent of \$1,180.00 on the first of each month. The tenant gave the landlord her forwarding address in writing on the move out condition inspection report on February 27, 2010 and the tenancy ended on February 28, 2010.



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The tenant states the landlord has withheld her security deposit illegally as she states she was not made aware that the landlord could keep her security deposit at the outset of the tenancy. The tenant states she was informed by a person at the Residential Tenancy Branch on three separate occasions that the landlord has kept her security deposit illegally. The tenant states the landlord has only returned \$15.00 of her security deposit and has withheld the remaining amount of \$575.00.

The tenant also seeks to recover her \$50.00 filing fee from the landlord for the cost of filing her application.

The landlord states there is a term in the tenancy agreement #5 which states if the tenant ends the fixed term tenancy before the end of the original term as set out above, the landlord may treat this agreement as being at an end. In such an event, the sum of \$500.00 will be paid by the tenant to the landlord as liquidated damages, and not as a penalty. Liquidated damages cover the landlords' costs of re-renting the unit and must be paid in addition to any other amounts owed by the tenant, such as unpaid rent or for damage to the rental unit. The landlord states the tenant had a copy of the tenancy agreement which she signed on October 26, 2009. The landlord has provided a copy of this agreement in evidence.

The landlord states the tenant attended the move out condition inspection and signed this report to agree that the landlord could deduct the sum of \$575.00 from her security deposit. Of this \$75.00 was for carpet cleaning and \$500.00 was the sum for the liquidated damages. No other damages or cleaning were required and the tenant had left the rental unit in a clean condition. The landlord has provided a copy of this report in evidence.

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The landlord states the tenant was also notified by letter on February 05, 2010 that she would be responsible for liquidated damages costs and any other costs for unpaid rent if the rental unit was not rented for March 01, 2010. The landlord has provided a copy of this letter in evidence. The landlord states the unit was re-rented for March 01, 2010 after it had been advertised in two newspapers.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. Section 38(4) of the Residential Tenancy Act states:

- (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
 - (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant,

The tenant argues that she was not aware the landlord could retain all or part of her security deposit at the end of the tenancy and has therefore kept the majority of her security deposit illegally. Having reviewed the documentary evidence I find the tenant did sign the tenancy agreement. In doing so she was agreeing to the term and conditions of the tenancy which includes the term concerning the amount of liquidated damages she would have to pay if she ended the tenancy before the end of the fixed term. I also find the tenant signed the move out condition inspection report to agree to the landlord deducting the sum of \$575.00 from her security deposit.

If the tenant had not agreed to the landlord keeping the sum of \$575.00 from her deposit on the move out condition report than the landlord would have had to file an

application herself to keep the security deposit. However the tenant did sign this report and did agree to these deductions being made.

Therefore, I find there is no basis for the tenants' arguments that the landlord did not inform her that she could make these deductions as it is evident from the documentary evidence that the tenant was made aware of this from the tenancy agreement, the letter sent to her by the landlord and from the move out condition inspection report.

Consequently I find the tenants application has no merit and is dismissed.

As the tenant has been unsuccessful with her claim I find she must bear the cost of filing her own application.

Conclusion

The Tenant's application is dismissed in its entirety 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: October 22, 2010.

Dispute Resolution Officer