



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 a Monetary Order for return of double the security deposit and recovery of the filing fee. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

Issues(s) to be Decided

Is the tenant entitled to return of double the security deposit?

Background and Evidence

I was provided undisputed evidence as follows. The tenancy commenced in 2003 and ended April 30, 2010. The tenant had paid a \$426.00 security deposit in 2003. The parties participated in move-in and move-out inspections together. At the time of move-out the tenant provided a forwarding address in writing and authorized a deduction of \$52.50 for drapery cleaning in writing. On May 15, 2010 the landlords issued a cheque for a refund of the security deposit, plus interest, less a deduction of \$84.80 for drapery and suite cleaning.

The tenant is seeking return of the double the additional \$32.00 withheld by the landlords. The tenant provided a copy of the move-out inspection report, cheque stub for the partial refund of the security deposit, and registered mail receipt.

The landlords were of the position additional cleaning was required and the tenant was late leaving the rental unit. The tenant denied these allegations. The landlord did not request a deduction for cleaning in an effort to make the move-out go as smoothly as possible but then determined it appropriate to make an additional deduction given the circumstances.

Analysis

As the parties were informed during the hearing, the landlords' submissions of additional cleaning was not an issue for me to decide for this proceeding as the landlords 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 landlords complied with the Act with respect to handling of the security deposit. The landlords are at liberty to make a separate application for damages or loss.

Section 38 of the Act provides for the return of security deposits and for ways a landlord may deduct amounts from a security deposit. The Act requires the landlord to return the security deposit and interest to the tenant unless the landlord has the tenant's written consent for deductions or has an Order from a Dispute Resolution Officer. The landlord must return the security deposit to the tenant or make an Application for Dispute Resolution claiming against the deposit within 15 days of the tenancy ending or receiving the tenant's forwarding address in writing.

It is important to note that security deposits are held in trust for the tenant. Security deposits, or parts thereof, do not belong to the landlord unless the landlord is authorized to make deductions by the tenant or a Dispute Resolution Officer. Accordingly, where the landlord does not comply with the Act and fails to return the security deposit the tenant is entitled to receive, the landlord must pay the tenant double the security deposit.

In this case, the landlords had the written consent of the tenant for a deduction of \$52.80 from the security deposit and the tenant's forwarding address on April 30, 2010. Accordingly, the landlord had until May 15, 2010 to return the security deposit and applicable interest, less the deduction of \$52.80 to the tenant or make an Application for Dispute Resolution. Since the landlord did not comply with the requirements of the Act with respect to the additional deduction of \$32.00 I grant the tenant's request for compensation of \$64.00.

As the tenant was successful in this application, the tenant is awarded the filing fee paid for making this application. I calculate that the landlord is obligated to pay the tenant the following amount:

Double security deposit (\$32.00 x 2)	\$ 64.00
Filing fee	<u>50.00</u>
Monetary Order for tenant	<u>\$ 114.00</u>

The tenant must serve the enclosed Monetary Order upon the landlords and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The tenant was successful in this application and has been provided a Monetary Order in the amount of \$114.00 to serve upon the landlords.

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 19, 2010.

Dispute Resolution Officer