

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking return of the balance of his security deposit.

The hearing was conducted via teleconference and was attended by the tenant and the landlord's agent.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for part of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree that the tenancy began in December 2008, after the tenant moved from another rental unit in the residential property, and ended by September 30, 2010. The parties agree a security deposit of \$397.50 was paid.

The landlord submitted into evidence a copy of a Condition Inspection Report showing the condition of the rental unit at the start of the tenancy. The landlord has not completed any portion indicating the condition at the end of the tenancy.

The parties agree that the tenant signed the portion of the Condition Inspection Report entitled "Security Deposit Statement" agreeing that the landlord could deduct a total of \$193.48 for suite cleaning; carpet cleaning; and window cover cleaning. The tenant signed this document on September 26, 2010 and included his forwarding address.

The landlord asserts that at the end of the tenancy the parties discussed the need for painting and the tenant agreed that he would pay for the painting after the landlord could determine the amount it would cost. No notations were made on the "Security Deposit Statement".

The parties agree that the tenant, at one point, verbally agreed for the landlord to keep the security deposit. The tenant testified that he had agreed to this as he just wanted to settle the matter but that after he agreed to it the landlord wanted an additional \$60.00 for cleaning the rental unit.

Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt, in writing, of the tenant's forwarding address, return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(4) allows the landlord to retain from that deposit any amounts that the tenant has agreed in writing to allow the landlord to retain.

I accept that the tenant and landlord agreed in writing that the landlord could retain \$193.48 from the original security deposit of \$397.50, leaving a balance of \$204.02.

I accept the testimony of both parties that the tenant had agreed verbally that landlord could keep the balance of the security deposit when the tenant thought that would end all matters between the parties.

However, once the landlord sought additional monies for cleaning, I find that the parties re-opened their negotiations and ultimately the landlord failed to obtain the tenant's agreement to any further deductions in writing, as is required under the *Act*.

As such, I find the tenant is entitled to the return of the balance of the security deposit.

As I have found that the landlord failed to obtain the tenant's permission to retain the full security deposit in writing and the landlord failed to file an Application for Dispute Resolution to claim against the security deposit within 15 days as noted above, I find the landlord has failed to comply with Section 38(1).

In addition, Section 38(6) states that if a landlord does not comply with 38(1) the landlord must pay the tenant double the amount of the security deposit.

Conclusion

I find that the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$458.55** comprised of \$0.51 interest owed;

\$408.04 double the security deposit and the \$50.00 fee paid by the tenant for this application.

This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced 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: March 08, 2011.

Residential Tenancy Branch