



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened upon the joint applications of the tenant and the landlord:

The tenants' application filed March 14, 2011 seeks:

1. A monetary order for the return of their security and pet damage deposits; and
2. Recovery of the filing fee paid for this application.

All parties appeared at the hearing and gave evidence under oath.

Background Summary

The evidence is that this tenancy ended February 25, 2011. Rent was fixed at \$1,350.00 per month and at the start of the tenancy on November 1, 2010 the tenant says she paid a security deposit of \$675.00 and a pet deposit of \$200.00. The tenant provided a copy of the Tenancy Agreement noting these payments having been made. The tenant says she sent a letter by registered mail to the landlord on February 16, 2011 requesting the return of her deposits however only \$658.21 was returned to the tenant. The tenant testified that she did not give the landlord permission to deduct any sum from her deposits.

The landlord acknowledges receiving the tenant's forwarding address but states that the security deposit was only \$625.00 not \$675.00 as noted in the receipt provided in evidence. The landlord says the deposit was to have been \$675.00 but the tenant did not have \$675.00 so the landlord accepted a partial payment of \$625.00 the other \$50.00, the landlord says, was never paid. The landlord says the tenant did not have the carpets shampooed so the landlord deducted the cost of the carpet cleaning and returned \$658.21.

The tenant testified that it is not true that she only paid \$675.00 the tenant says it was the landlord who made the error on the receipt writing \$625.00 instead of \$675.00 but the tenant did not notice the error until later at which time the landlord did not provide a new receipt.

Findings

Section 38(1) of the Act requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit.

If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord **must** pay the tenant double the amount of the deposit (section 38(6)).

I will accept that the tenant paid a security deposit of \$675.00 as noted in the Tenancy Agreement in addition the tenant paid a pet deposit of \$200.00 for a total deposit payment of \$875.00. Rather than returning the full sums paid, in her own testimony the landlord confirms that she only returned \$658.21.

I find that the landlord did not comply with Section 38 and she must pay the tenants double the deposit. The original deposit totaled \$875.00 and doubling the entire deposit would now result in a monetary Order being made in favour of the tenants in the sum of \$1,750.00.

However, the evidence is that the tenants have received a cheque from the landlord in the sum of \$658.21. As the landlord did return part of the deposit I will deduct this sum from the monetary award: $\$875.00 \times 2 = \$1,750.00 - \$658.21 = \$1,091.79$.

As the tenants have been successful in this claim I will also award them recovery of the \$50.00 filing fee for a total monetary award in favour of the tenants in the sum of \$1,141.79.

The tenants are provided with an Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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*.
