



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, O, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order and a cross-application by the landlord disputing the tenant's claim. Both parties were represented at the conference call hearing.

Issue to be Decided

Is the tenant entitled to an order for the return of double her security deposit?

Background and Evidence

The relevant facts were not in dispute. The tenancy began on July 1, 2010 at which time a \$482.50 security deposit was paid and ended on January 31, 2011. The tenant provided her forwarding address at the end of the tenancy when she and the landlord's agent completed a condition inspection report. On the report, the tenant wrote that she agreed to deductions to her security deposit which included \$75.00 for carpet cleaning and \$500.00 in liquidated damages.

After the tenancy had ended, the tenant's mother, acting as an agent for the tenant, asked the landlord for the return of the security deposit. The landlord testified that although the tenant had been charged for liquidated damages, the head office determined that because of the circumstances surrounding her leaving, they were willing to waive that payment and issued a cheque for \$407.50, which was the balance of the security deposit after deducting the cost of carpet cleaning. The part of the report that had been signed by the tenant was altered by the landlord to note that just \$75.00 for carpet cleaning was payable by the tenant and that \$407.50 was due to the tenant.

The landlord issued a cheque for \$407.50 to the tenant and sent it to the tenant's mother's address. By this point, the tenant's mother had already filed for dispute resolution, so she returned the letter unopened to the landlord.

Analysis

Section 38(4) of the Act permits a landlord to retain from the security an amount that the tenant agrees in writing to pay. If the tenant believed she should not have been responsible for liquidated damages, she should not have given the landlord written permission to retain her security deposit in payment of that amount. I find that the tenant's subsequent change of heart is insufficient to invalidate her agreement and I find that the landlord had no obligation to return any monies to the tenant whatsoever. The fact that the landlord later offered a gratuitous payment which was refused by the tenant's agent does not impose on the landlord an obligation to repay any part of the security deposit.

Conclusion

The tenant's claim is dismissed as the landlord is entitled to retain the security deposit. The landlord did not need to make an application to dispute the tenant's claim and I dismiss her application as well.

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: August 26, 2011

Residential Tenancy Branch