

DECISION

Dispute Codes MNSD, O

Introduction

This is an application filed by the Tenant for a monetary order request for the return double the disputed amount of the withheld portion of the damage deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave evidence. As both parties have attended the hearing and have made detailed reference to the submitted evidence, I am satisfied that each has been properly served with the notice of hearing and evidence packages.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order for the return of double the disputed amount?

Background and Evidence

This Tenancy began on October 1, 2010 on a fixed term tenancy until September 30, 2011 as shown in the submitted copy of the signed tenancy agreement. The Tenancy ended on July 31, 2011 by mutual agreement. The monthly rent was \$1,750.00 payable on the 1st of each month. Both parties agreed that the Landlord received forwarding address in writing from the Tenant by Text on August 7th or 8th of 2011.

Both parties agreed that the Landlord obtained both a security deposit of \$875.00 and a damage deposit of \$875.00 from the Tenant on October 27, 2010. The Tenant has submitted copies of receipts issued for both from the Landlord. The Tenant has also submitted copies of cheques from the end of tenancy issued from the Landlord to the Tenant for a cheque of \$875.00 for the return of the "security deposit" and a cheque of \$393.40 for the return of "remaining damage deposit". The Tenant states that the Landlord withheld \$481.60 and is seeking the return of double this amount for a total of \$963.20. The Landlord disputes this stating that permission was granted from the Tenant to retain an amount from the damage deposit. The Tenant disputes this. The Landlord is unable to provide any supporting evidence for this claim. The Landlord has not filed for dispute resolution.

Analysis

I accept the undisputed testimony of the Tenant. The Tenant has established a claim for the return of double the disputed \$481.60 retained by the Landlord.

Section 38 of the Residential Tenancy Act states,

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) **repay**, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) **make an application for dispute** resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(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, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been

extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [*service of documents*] or give the deposit personally to the tenant.

I find that the Landlord did not return the disputed amount, nor did they apply for dispute resolution claiming against the security deposit. The Tenant is entitled to the claimed amount of \$963.20.

The Tenant is also entitled to recovery of the \$50.00 filing fee. I grant a monetary order under section 67 to the Tenant for the balance due of \$1,013.20. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Tenant is granted a monetary order for \$1,013.20.

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: January 20, 2012.

Residential Tenancy Branch