



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order for the return of the security deposit retained by the landlord. Both parties appeared and gave testimony.

Issue(s) to be Decided

The tenant was seeking to receive a monetary order for the return of the security deposit paid at the start of the tenancy on February 15, 2007. The issue to be determined based on the testimony and the evidence is whether the tenant is entitled to the return of the security deposit pursuant to section 38 of the Act.

The burden of proof was on the applicant to prove that the deposit was paid and the burden of proof was on the respondent landlord to prove that the deposit was returned or that the landlord had a right under the Act or an Order to keep it.

Background and Evidence

The tenant testified that the tenancy began on February 15, 2007. The current rent was \$1150.00 and a security deposit of \$575.00 was paid. The landlord testified that the tenancy ended on September 28, 2011 and the written forwarding address was provided to the landlord by October 4, 2011. A copy of the tenancy agreement and the tenant's letter requesting the return of the security deposit was in evidence. The tenant testified that the landlord repaid \$330.00 of the deposit back to the tenant. The tenant testified that they did not cash the cheque as they did not agree with the \$245.00 deducted by the landlord. A copy of the landlord's cheque for partial return of the security deposit was in evidence. The tenant testified that through email communications, they had consented to a deduction of \$85.00 comprised of compensation for damage to the window frame and some missed grease spots above the microwave. A copy of this email was in evidence. The tenant testified that despite repeated communications on the subject, the landlord failed to return the remainder of the security and pet damage deposit and on November 21, 2011, the tenant was finally forced to make application for dispute resolution.

The landlord testified that the tenant had left the unit in a state needing repairs and that they had been negotiating the refund in good faith and these ongoing discussions took longer than 15 days. The landlord submitted a significant amount of evidence in support of the landlord's position that all of the security deposit was not returned and a portion was retained because of damage to the unit and cleaning costs caused by the tenant.

Analysis

In regard to the return of the security and pet damage deposits, I find section 38 of the Act is clear. Within 15 days after the later of the day the tenancy ends, and the date the landlord receives the written forwarding, the landlord must either repay the security deposit or pet damage deposit to the tenant with interest or make an application for dispute resolution claiming against the security deposit or pet damage deposit. In this instance, the landlord repaid a portion of the deposit within the 15 days.

The Act states that the landlord can only retain a deposit without obtaining an order if the tenant agrees in writing that the landlord can keep it to satisfy a liability at the end of the tenancy. The tenant testified that they had only agreed to surrender \$85.00 for two deficiencies that were being claimed by the landlord. I find that the tenant did not give the landlord written permission to keep more than the \$85.00 mentioned in the communication to the landlord. I find that the landlord did not return the security deposit funds within 15 days, nor did the landlord make application for an order to keep the deposit.

Section 38(6) provides that If a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord must pay the tenant double the amount of the security deposit and pet damage deposit.

I find that the landlord's failure to pay back the entire amount of the deposit minus the \$85.00 consented to by the tenant within 15 days entitles the tenant to be paid double the deposit minus \$85.00 for the agreed-upon deductions. In this instance, the security deposit paid in February 2007 was \$575.00, and double this amount would be \$1,150.00. The tenant is also entitled to interest of \$16.30 on the original amount paid and the \$50.00 cost of the application for a total of \$1,216.30. After deducting the \$85.00 agreed upon by the tenant, I find that the tenant is entitled to a refund of \$1,131.30.

With respect to the landlord's evidence, I was not able to hear the landlord's claim against the tenant during these proceedings because this hearing was convened to deal with the *tenant's* application under section 38 of the Act and that was the only matter before me. The landlord did not make a cross application. That being said, I must point

out that the landlord is at liberty to make a separate application to claim damages if the landlord feels that compensation from the tenant is warranted pursuant to section 67 of the Act.

Conclusion

I hereby issue a monetary order to the tenant in the amount of \$1,131.30. This order must be served on the Respondent 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: February 15, 2012.

Residential Tenancy Branch