



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and an agent for the landlord.

Neither party provided a copy of the move out Condition Inspection Report that could confirm amounts agreed by both parties to be deducted from the security and pet damage deposit. I requested that both parties provide me with a copy of the Report by fax by the end of business on June 20, 2012. Both parties provided copies by 11:00 June 19, 2012.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for double the amount 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 the tenancy began on May 1, 2011 as a 1year fixed term tenancy for a monthly rent of \$1089.00 due on the 1st of each month with a security deposit and pet damage deposit, in total, of \$929.00 paid.

The parties did not agree on the amount of each deposit. The tenant testified the security deposit was \$429.00 and the pet damage deposit was \$500.00 while the landlord's agent testified the security deposit was \$399.00 and the pet damage deposit was \$530.00.

The parties agreed the tenancy ended on March 31, 2012 and the tenant testified that she provided the landlord with the forwarding address on this same date. The tenant testified that she received a portion of her security and pet damage deposits back on April 19, 2012. The tenant submitted into evidence a copy of the envelope sent by the landlord with the cheque that is post marked April 16, 2012. The landlord's agent did not dispute any of the dates provided by the tenant.

The tenant submitted a copy of a statement of account she received from the landlord explaining the deductions from her security deposit confirming the landlord had deducted \$250.00 recovery of an incentive; \$400.00 lease break charge; \$22.00 to fix a light fixture and replace a light bulb.

The tenant testified she had agreed, on the move out Condition Inspection Report, to a deduction of \$22.00 for the light fixture and light bulb, but that she did not agree to any other deductions, from the deposits.

Neither party provided a copy of a tenancy agreement but they did agree the tenancy was subject to a lease break fee of \$400.00 should the tenant vacate the rental unit prior to the end of the fixed term and to a \$250.00 incentive.

The landlord's agent testified that the lease break fee was agreed to by the tenant at the start of the tenancy and the recovery of the incentive was required because she vacated prior to completion of the tenancy, as such the landlord withheld these amounts and did not file an Application for Dispute Resolution seeking to claim these amounts.

Analysis

Section 20(e) of the *Act* stipulates a landlord must not require, or include as a term in a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement. As such, I find that even if the parties had agreed to the repayment of an incentive or to a lease breaking fee at the start of the tenancy; the landlord is not entitled to automatically withhold these amounts from the security deposit.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security and pet damage deposits to the tenant or file an Application for Dispute Resolution to claim against the deposits.

Section 38(4) states a landlord may retain an amount from a security deposit or a pet damage deposit if, at the end of the tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant or the director orders that the landlord may retain the amount.

From the evidence and testimony before I find the parties had agreed the landlord could retain \$22.00 from the security deposit. As such, I also find the landlord was required to either file an Application for Dispute Resolution to claim against the deposits for the lease break fee and incentive return or return the remaining \$907.00 to the tenant within 15 days of March 31, 2012.

Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit. Based on the undisputed testimony and evidence provided by the tenant that the landlord mailed the security

deposit to the tenant on April 16, 2012, I find the landlord failed to comply with Section 38(1) and the tenant is therefore entitled to double the amount of the balance of the deposits.

Conclusion

Based on the above, I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,864.00** comprised of \$1,814.00 the security and pet damage deposits less the agreed upon deduction - doubled and the \$50.00 fee paid by the tenant for this application.

I order the tenant may deduct the amount already returned by the landlord in the amount of \$257.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,607.00**.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: June 18, 2012.

Residential Tenancy Branch