



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 in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. An Order for return of the security deposit - Section 38
2. An Order to recover the filing fee for this application - Section 72.

The Tenants and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on August 15, 2009 on a fixed term lease and another lease was entered into for September 1, 2011. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$697.50 and a pet deposit of \$697.50. The Tenant states that she also paid \$100.00 security deposit for each of two fobs. The Parties agree that the two fobs were secured by the Tenant under the terms of the first lease which was not filed as evidence by either Party. The first lease indicates in an addendum that a deposit of \$100.00 is required for the fob with a full refund when returned in working condition. There is no mention in the first lease that a second fob must be purchased. The latest lease includes a statement that a second fob can be purchased.

The tenancy ended on March 1, 2012. Both a move-in and move-out inspection was conducted by the Parties and the Tenant returned both fobs. The Tenant provided her

forwarding address at the time of the move-out inspection on March 2, 2012 and agreed that the Landlord could retain \$100.00 from the security deposit for tile stains.

The Parties agree that on March 21, 2012, the Landlord mailed a security deposit of \$1,395.00 to the Tenant. The Landlord states that the remainder of the security deposit was retained for the stains on the tile as agreed and for one of the fobs that was returned damaged. The Tenant states that the second fob did not work during the tenancy. The Landlord states that the security deposit was returned a few days late as the Landlord was under significant stress at the time. The Tenant stated at the hearing that she was seeking return of double the security deposit.

Analysis

Section 1 of the Act defines security deposit to mean money paid by a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting the residential property. This definition includes a deposit for an access device where it is the only means of access. Given the agreement of the Parties that the Tenant obtained the two fobs under the terms of the first lease, I find that the Tenant paid a security deposit for each fob in the combined amount of **\$200.00** and that this amount was paid in addition to the pet and security deposit for a **total security deposit amount of \$1595.00 (697.50 + 697.50 + 200.00)**. Based on the agreement of the Parties, I find that the Landlord rightfully could withhold \$100.00 from the security deposit for the tile stains, leaving the amount of **\$1,495.00** to be returned to the Tenant.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Although the Landlord has argued that stress accounted for the late return of the security deposit, I find that this reason does not alleviate the Landlord of the definitive obligations contained in the Act in relation to the return of the security deposit. As the

Landlord failed to make an application for dispute resolution claiming against the security deposit for the fob, and failed to return the amount of \$1,495.00 within 15 days of receipt of the Tenant's forwarding address, I find that the Landlord is required under the Act to pay the Tenant double the original security deposit paid of \$1,595.00 in the amount of **\$3,190.00 less the agreed upon deduction of \$100.00 and the returned amount of \$1,395.00 leaving the amount of \$1,695.00.** I find therefore that the Tenant has established a monetary entitlement of the remaining amount of **\$1,695.00.** The Tenant is also entitled to return of the \$50.00 filing fee for a total entitlement of **\$1,745.00.**

Conclusion

I Grant the Tenant an Order under Section 67 of the Act for the amount of **\$1,745.00.** If necessary, this order may be filed in the Small Claims 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 Act.

Dated: June 26, 2012.

Residential Tenancy Branch