



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 by way of conference call in repose to the tenant's application to recover double the security deposit and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Is the tenant entitled to recover double the security deposit?

Background and Evidence

The parties agree that this tenancy started on September 01, 2011. This was a fixed term tenancy which was due to expire on August 01, 2012. The tenant gave the landlord Notice to end the tenancy effective on April 30, 2012. Rent for this unit was \$1,300.00 which was due on the 1st day of each month. The tenant paid a security deposit of \$650.00 on August 08, 2011. A walk through of the unit was conducted at the start of

the tenancy but no inspection report was completed. The tenant gave the landlord her forwarding address in writing on May 14, 2012.

The tenant testifies that the landlord has only returned the sum of \$248.62 of the tenant's security deposit on May 31, 2012. The cheque is dated for May 26, 2012 but the postmark shows it was not posted until May 31, 2012.

The tenant seeks to recover double the security deposit.

The landlord testifies that she retained a portion of the tenant's security deposit for carpet cleaning of \$76.38 as agreed by the tenant by e-mail on May 14, 2012. The landlord has provided a copy of this e-mail in evidence. The landlord testifies that she also retained a portion of the deposit because the tenant ended the tenancy before the end of the fixed term.

The tenant disputes the landlords claim and states although she did agree the landlord could return her security deposit less the carpet cleaning fee, as the landlord did not return the deposit within 15 days the tenant rescinded this offer. The tenant testifies the landlord also had the carpets cleaned before the end of the tenancy because the landlord was trying to sell the house and was concerned about the carpets being clean for the landlord's open houses.

Both parties provided other evidence that was not relevant to my decision. I looked at the evidence that was relevant and based my decision on this.

Analysis

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and

does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that the landlord did receive the tenants forwarding address in writing on May 14, 2012. As a result, the landlord had until May 29, 2011 to return the tenants security deposit. I find the landlord did not return all of the security deposit and the landlord has extinguished their right to file a claim against the deposit as the landlord failed to complete a move in condition inspection report of the property in accordance with s. 24(2) of the *Act*. However, as the tenant did give the landlord written consent to keep the carpet cleaning fees of \$76.38 I find the tenant is not able to rescind that offer once it has been made. Therefore, I find that the tenant has established a claim for the return of double the security deposit less the amount agreed upon for carpet cleaning pursuant to section 38(6)(b) of the *Act*. The amount already paid to the tenant of \$248.62 will be deducted from the total. There is no interest accrued on security deposits since 2011.

I also find the tenant is entitled to recover the **\$50.00** filing fee from the landlord pursuant to section 72(1) of the *Act*. The tenant is entitled to a Monetary Order as follows:

Security deposit	\$650.00
Less carpet cleaning	(-\$76.38)
Balance remaining	\$573.62
Double the remaining balance	\$1,147.24
Less amount paid by landlord	(-\$248.62)
Plus filing fee	\$50.00
Total amount due to the tenant	\$948.62

Conclusion

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$948.62**. The order must be served on the respondent and is enforceable through the Provincial Court 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: August 15, 2012.

Residential Tenancy Branch