



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF, O

Introduction

This hearing was convened by way of conference call in repose to the tenant's application to recover double the security deposit; other issues; and to recover the filing fee from the landlord for the cost of this application.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*, and was handed to the landlord in person on June 20, 2012.

The tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the tenant entitled to recover double the security deposit?
- Is the tenant entitled to recover \$150.00 for repairs made to the unit?

Background and Evidence

The tenant testifies that this month to month tenancy started on November 01, 2011 and ended on April 29, 2012. Rent for this unit was \$725.00 per month and was due on the

first day of each month. The tenant paid a security deposit of \$362.50 on October 25, 2011.

The tenant testifies she gave the landlord her forwarding address in writing on the move out inspection report. The tenant testifies that she handed the keys back on May 01, 2012 after attending the move out condition inspection with the landlord's agent. On May 22, 2012 the landlord's agent informed the tenant that the landlord had sent a cheque to the tenant for her security deposit and they confirmed the tenants address. On May 30, 2012 the tenant contacted the landlord's agent by text message as the tenant had not received the cheque from the landlord. The landlord's agent responded on June 01, 2012 and said she would check to see which day the cheque had been sent. On June 04, 2012 the landlords agent contacted the tenant and informed the tenant that a cheque had been sent and if the tenant did not receive it within a couple of days they would cancel that cheque and issue a new one. On June 08, 2012 the tenant states she still had not received the cheque so contacted the landlord's agent and asked them to write a new one and the tenant would come and collect it. The tenant received no response to that so the tenant filed her application to recover double her security deposit.

The tenant testifies that on June 15, 2012 the landlord contacted her and informed the tenant that the cheque had been sent to the wrong address and that there was a cheque waiting for the tenant to pick up. The tenant states she did not go to pick up the cheque but the landlord sent the cheque to the tenant by mail on June 22, 2012. The cheque was made out in the amount of \$242.50. There was no letter or explanation as to the deductions made from the tenant's security deposit and the tenant testifies that she did not give the landlord or the landlord's agent permission to keep all or part of the security deposit. The tenant testifies that she has not cashed the cheque but believes the cheque is still valid.

The tenant testifies that when they moved into the unit the unit was in a poor condition and there were three holes in the wall. The tenant states these were identified on the

move in condition inspection however the tenant states she does not have a copy of this report. The tenant testifies that the landlords agent said if the tenants patched these holes the landlord would provide the materials and the landlord would deduct something from the rent. The tenant testifies that the landlord did not provide anything to patch the holes and the tenant purchased some filler herself and patched the holes before the tenancy ended. The tenant testifies this work was identified on the move out inspection report however the tenant states the landlord failed to send a copy of that report to the tenant. The tenant seeks to recover the sum of \$150.00 for patching the holes.

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 01, 2012. As a result, the landlord had until May 16, 2011 to return the tenants security deposit. I find the landlord did not return the security deposit and the landlord has extinguished their right to file a claim against the deposit as the landlord failed to provide a copy of the move out condition inspection report to the tenant within 15 days in accordance with s. 36(2) of the *Act*. The landlord did however send the tenant a cheque for \$242.50 and this amount has been deducted from the tenant's monetary award. Therefore, I find that the tenant has established a claim for the return of double the security deposit of \$725.00 pursuant to section 38(6)(b) of the *Act* less the amount returned to the tenant by the landlord.

With regard to the tenants claim for \$150.00 for patching holes in the rental unit, the tenant has failed to provide any evidence to show that the holes existed or that if they did exist that the tenant repaired them or the actually amount incurred for this repair. Consequently, I find the tenant has not met the burden of proof for this section of the claim and this section is therefore dismissed without leave to reapply.

I 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 for the following sum

Double the security deposit	\$725.00
filing fee	\$50.00
Less amount returned to the tenant	(-\$242.50)
Total amount to be returned to the tenant	\$532.50

Conclusion

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$532.50**. 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 20, 2012.

Residential Tenancy Branch