



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes 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 the landlord.

The tenant clarified that he was seeking compensation in the amount \$125.00 for the unreturned security deposit and lost salary for time taken off of work to deal with these matters.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for return 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 September 1, 2001 as a month to month tenancy with a security deposit of \$600.00 paid on September 1, 2001 and an additional security deposit of \$125.00 paid on June 1, 2004. The parties could not agree on the monthly rental amount at the end of the tenancy. The tenancy ended on June 30, 2012.

The tenant has submitted a letter from the landlord dated July 12, 2012 enclosing a cheque in the amount of \$456.71 for return of the security deposits plus interest less \$300.00 for sink damage, a moldy ceiling in the bathroom; damage to the staircase and a large oil spill in the carport.

The landlord has calculated the security deposit and interest as follows:

Security deposit paid September 1, 2001 -	\$600.00
Interest	- \$6.02
Security deposit paid June 1, 2004	- \$125.00
Interest	- <u>\$25.69</u>
Total	\$756.71

The tenant also provided a copy of a letter from the tenant to the landlord dated July 16, 2012 providing his forwarding address and requesting the return of the balance of the security deposits of \$300.00 within 14 days.

The tenant also provided a copy of an undated letter from the landlord enclosing a cheque in the amount of \$175.00 but stating that she will not provide any further leaving a balance of \$125.00 for the damage to the carport.

The landlord confirmed that she had the tenants forwarding address prior to the end of the tenancy and in fact had attended their new address on the day after the end of the tenancy and that she, in total, has retained \$125.00 from the security deposit to clean the oil spill in the carport. The landlord also testified she has not filed an Application for Dispute Resolution to claim against the security deposits.

Analysis

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 deposit in full; less any amounts mutually agreed upon in writing; or file an Application for Dispute Resolution to claim against the security deposit. 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.

As the landlord confirmed that she had the forwarding address by the end of the tenancy; has not filed an Application for Dispute Resolution to claim against the deposit; and because the tenants did not give the landlord permission to retain any amounts, in writing, from the security deposit I find the landlord has failed to comply with Section 38(1) of the *Act*.

As a result, I find the tenant is entitled to double the amount of the security deposit held at the end of the tenancy in accordance with Section 38(6). However, as the *Act* does not provide for lost wages or salary when dealing with disputes under the *Act*, I dismiss the portion of the tenant's Application seeking compensation for these losses.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$844.21** comprised of \$1,400.00 double the security deposit; \$31.92 interest and the \$50.00 fee paid by the tenant for this application less \$637.71 the amount already returned by the landlord.

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: October 22, 2012.

Residential Tenancy Branch