



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This is an application by the tenant for a monetary order for return of double the security deposit.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of double the security deposit?

Background and Evidence

The tenant paid a security deposit of \$475.00, in November 2011. The tenant vacated the premises on June 30, 2012. On the move-out inspection report the tenant provided the landlord with written notice of her forwarding address. The tenant also provided the landlord written permission to retain the amount of \$190.00 for damages to the unit from the security deposit.

The landlord testified the cost of the damage was more than what was agreed to in the move-out inspection. The landlord acknowledges he did not return any of the security deposit to the tenant and did not file an application for dispute resolution.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the landlord is in breach of the Act.

The tenant had agreed, in writing, that the landlord could retain \$190.00 from the security deposit. However, the landlord did not return the balance of the security deposit to the tenant within 15 days.

There was also no evidence to show that the landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the tenant, to retain the portion of the security deposit that was not authorized by the tenant.

The landlord has breached section 38 of the Act. The landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies.

The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from a Dispute Resolution Officer. Here the landlord only had the authority to retain \$190.00, and did not have any authority under the Act to keep the balance of the security deposit.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Conclusion

Having made the above findings, I must order, pursuant to section 38 and 67 of the Act, that the landlord pays the tenant the sum of \$950.00, double the security deposit (\$475.00) on the original amount held. However, the tenant agreed in writing that the landlord could retain \$190.00 from the security deposit. Therefore, the monetary order of \$950.00 is reduced by \$190.00. I grant the tenant a monetary for the balance due of **\$760.00**.

The tenant is given a formal order in the above terms and the landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this order, the order may be filed in the small claims division of the Provincial 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 *Residential Tenancy Act*.

Dated: October 15, 2012.

Residential Tenancy Branch

