



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 and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on August 16, 2012 for:

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

The Landlord applied on August 14, 2012 for:

1. A Monetary Order to retain all or part of the security deposit – Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

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

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Are the Tenants entitled to return of double the security deposit?

Are the Parties entitled to recovery of their respective filing fee?

Background and Evidence

The tenancy started on December 1, 2011 and ended July 31, 2012. At the outset of the tenancy the Landlord collected \$737.50 as a security deposit. The Parties conducted a mutual move-in and move-out inspection.

The Landlord states that the Tenants left the unit unclean and with damages and claims costs for cleaning and repairs. The Landlord states that the cleaning and repairs were done by the owner and that the Landlord who sublet the unit to the Tenants is passing some of these charges on to the Tenants. The Landlord did not provide any supporting evidence of the charges made by the owner and provided no invoices or bills for the amounts claimed.

The Tenants state that they cleaned the unit and made repairs, that the owner is not trustworthy and that the claim being made by the Landlord is not about damages suffered by the Landlord. The Tenants agree to 2 hours of cleaning claimed by the Landlord.

The Tenants state that although the Landlord filed its application to claim against the security deposit, the Landlord's application is frivolous and therefore the Landlord should still be required to repay double the amount as compensation for the length of time the Tenants were required to wait for return of the security deposit. Further, the Tenants argue that the Landlord should have returned at least the amount of security deposit was not being claimed in the interim. The Landlord states that the Residential tenancy Branch told the Landlord that she should not return any of the security deposit until the dispute was determined or settled.

Analysis

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. As the Landlord did not provide any evidence to support the costs being claimed, I find that the Landlord has not sufficiently substantiated, on a balance of probabilities, the costs claimed have either been incurred or established, other than the costs agreed to by the Tenants. I therefore find that the Landlord has established a monetary amount of **\$40.00** for two

hours of cleaning. This amount is based on the hourly amount claimed by the Landlord for cleaning. As the Landlord has been only minimally successful with its claim, I decline to award recovery of the respective filing fees.

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. As the Landlord made an application for dispute resolution claiming against the security deposit, I find that the Landlord is not required to pay the Tenants double the security deposit. Although the Tenants argue that the Landlord's claim is frivolous, I do not, in my opinion, find that any section of the Act provides for a penalty or compensation to the responding party by way of doubling the return of the security deposit where a claim is frivolous. In any event, I do not find that the Landlord's claim is frivolous given the success, albeit limited, of the Landlord's claim. I do find however that given the very limited success of the Landlord's claim and given that the Landlord did not return the portion of the security deposit that was not being claimed, that the Tenants are entitled to recovery of their filing fee in the amount of **\$50.00**

I order the Landlord to deduct **\$40.00** from the security deposit of **\$737.50** plus zero interest and to return the remaining amount of **\$697.50** plus **\$50.00** to the Tenants.

Conclusion

I Order the Landlord to retain the amount of \$40.00 from the security deposit of \$737.50 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for the amount of **\$747.50**. 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 *Residential Tenancy Act*.

Dated: November 06, 2012.

Residential Tenancy Branch