



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 as a result of the landlord's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "*Act*"). The landlord applied for authorization to keep all or a portion of the security deposit and to recover the filing fee.

The landlord appeared by conference call and gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and make submissions during the hearing.

As the tenants did not attend the hearing, service was considered. The landlord testified that the Notice of Hearing and evidence package was served via registered mail on September 12, 2012 to the tenants at their forwarding address received by the landlord on September 7, 2012 and post-marked on August 28, 2012 indicating that it was received at the post office on that date. A registered mail receipt tracking number was provided during the hearing and submitted as evidence prior to the hearing. I find the tenants were served in accordance with the *Act* five days after September 12, 2012 pursuant to section 90 of the *Act*.

Issue to be Decided

- Is the landlord entitled to retain all or a portion of the security deposit?

Background and Evidence

A fixed term tenancy began on April 1, 2012 and was due to expire on March 31, 2013. Monthly rent in the amount of \$1,250.00 was due on the first date of each month. A security deposit of \$625.00 was paid by the tenants at the start of the tenancy.

The tenants vacated the rental unit on July 31, 2012, prior to the expiry of their fixed term tenancy. The landlord was able to find new tenants who began a new tenancy on August 1, 2012.

The landlord has applied for a monetary order in the amount of \$257.70 comprised of \$75.00 for her handyman to show her suite and the remaining amount for ferry costs associated for the landlord to travel to the suite to show it and to meet with the new tenants to sign a new tenancy agreement.

The landlord submitted evidence of 2 cheques sent to each of the two tenants. Both cheques were made out in the amount of \$158.65. That amount combined equals \$317.30 which left the amount withheld by the landlord from the original security deposit of \$625.00 as follows:

Original security deposit	\$625.00
Less cheque sent to tenant JS on Sept. 13, 2102 via Priority Post	(\$158.65)
Balance of security deposit withheld by landlord	\$307.70

The landlord testified that the amount of \$307.70 is comprised of her claim of \$257.70 plus the \$50.00 filing fee.

The landlord testified that a move-in condition inspection report was completed with the tenants on April 2, 2012, however, was not submitted as evidence. The landlord also testified that a move-out condition inspection report was completed with the tenants on July 31, 2012, however, was not submitted as evidence.

The landlord testified that she received the forwarding address from the tenants on September 7, 2012 via regular mail that was post-marked on August 28, 2012. The landlord filed her application to retain a portion of the security deposit on September 10, 2012.

The landlord stated that one tenant, HS, has already cashed her cheque in the amount of \$158.65, while the other tenant, JS, has not yet cashed her cheque for the same amount. The cheque was dated and issued in September 2012.

Analysis

Based on the undisputed testimony of the landlord, the evidence submitted, and on the balance of probabilities, I find the following.

Landlord's claim for \$257.70 plus \$50.00 filing fee – The landlord has applied to retain \$257.70 of the tenants' security deposit due to costs she incurred due to the tenants breaching a fixed term tenancy. The landlord described the costs as \$75.00 that

she paid to her handyman to show the suite, and the remainder as travel costs to attend the suite to show it herself and sign a new tenancy agreement with the new tenants. I **find** the *Act* does not provide a remedy to compensate for a landlord or their agent's travel expenses or time to show a suite and sign a new tenancy agreement under the *Act*. Those costs are general costs associated with being a landlord. Therefore, I **dismiss** this portion of the landlord's claim as there is no remedy under the *Act*.

As the landlord was not successful in her application, I **do not** grant the recovery of the filing fee.

I have dismissed with landlord's application to retain a portion of the security deposit. However, I **find** that the landlord did comply with section 38 of the *Act* by filing for dispute resolution towards the security deposit within 15 days of receiving the tenants' forwarding address. Therefore, I **do not find** that the tenants are entitled to the return of double their original security deposit. I **order** the landlord to return the remaining security deposit balance of \$307.70 to the tenants within 1 week of receiving this decision.

The balance of \$307.70 was arrived at after deducting the 2 cheques already provided to the tenants by the landlord in the amount of \$158.65 for a total of \$317.30. I accept the undisputed testimony of the landlord that tenant HS has already cashed her cheque for \$158.65, while tenant JS has not. Tenant JS may still cash the cheque as it was issued in September 2012 and is not considered to be stale dated as of the date of this decision.

I grant the tenants a monetary order pursuant to section 67 of the *Act*, in the amount of \$307.70, which will be of no force or effect if the landlord pays the tenants within 1 week of receiving this decision. Should the tenants not receive payment from the landlord, this order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I dismiss the landlord's application without leave to reapply.

I order the landlord to return the balance of the security deposit to the landlord in the amount of \$307.70 within 1 week of receiving this decision. I grant the tenants a monetary order pursuant to section 67 of the *Act*, in the amount of \$307.70, which will be of no force or effect, if the landlord pays the tenants by cheque within 1 week of receiving this decision.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 27, 2012

Residential Tenancy Branch