



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD

Introduction

This hearing dealt with an application by the tenant for a monetary order. Both parties participated in the conference call hearing with the landlord being represented by W.G.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on January 1, 2003 and ended on October 3, 2012. They further agreed that at the outset of the tenancy the tenant paid a \$427.50 security deposit. The tenant provided his forwarding address in writing on September 1, 2012.

At the end of the tenancy, the parties conducted an inspection of the unit and the tenant signed a document indicating that he agreed to deductions from the security deposit. The document listed a total deduction of \$360.00, but after the tenant signed the document, the landlord testified that she realized that she had not properly added the charges and she changed the total deductions to \$410.00 to reflect a \$50.00 charge for a late payment fee.

The landlord issued 2 cheques to the tenant. The first cheque was issued shortly after the end of the tenancy and was for \$32.62. The landlord had arrived at this figure because she credited the tenant with the \$427.50 security deposit and \$15.12 in interest, totaling \$442.62. From this sum she deducted the revised deductions including the late payment fee.

The parties engaged in some discussion after the tenant received this cheque and the landlord issued a second cheque on or about October 23. The cover letter for the second cheque indicated that the tenant was credited with \$130.00 for the return of 3 building keys plus refunded the \$50.00 previously deducted from the previous cheque.

From this \$180.00 total, the landlord deducted a fee of \$33.81 for overholding the suite and issued a cheque in the amount of \$146.19.

The tenant testified that he had paid a total of \$200.00 for key deposits as he had paid a \$50.00 deposit for 4 extra sets of keys, all of which were returned at the end of the tenancy.

The landlord denied that the tenant had paid any key deposits and testified that she had no idea how the tenant had obtained 4 extra sets of keys. The landlord testified that on one occasion the tenant had lost a key and was charged \$50.00 for a replacement, but she believes this was the only amount that the tenant was charged.

The tenant seeks an award of double his security deposit and recovery of key deposits.

Analysis

Section 38(1) of the Act provides that within 15 days of the later of the date the tenant provides his forwarding address and the end of the tenancy, the landlord must either return the security deposit in full (less any deductions agreed upon in writing) or file an application to retain the deposit. The landlord issued a cheque within 15 days, but withheld \$50.00 which I find the tenant did not agree upon. The landlord repaid the \$50.00, but did not do so within 15 days.

Section 38(6) of the Act provides that when a landlord does not comply with section 38(1), he is liable to pay the tenant double the amount withheld. I find that the landlord withheld \$50.00 and although that amount was returned, I find that the landlord is liable for \$50.00 as a penalty pursuant to section 38(6). I therefore award the tenant \$50.00.

I find insufficient evidence to prove that the tenant paid \$200.00 in key deposits. The tenant provided no evidence to corroborate his claim and I find that the tenant paid just \$130.00 in deposits. The landlord withheld \$33.81 from the deposits without the tenant's consent and without an order from this office and I find that the amount was wrongfully withheld. I order the landlord to return this sum to the tenant and I award the tenant \$33.81.

As the tenant has enjoyed only limited success, I find it appropriate to award him one half, or \$25.00, of the \$50.00 filing fee paid to bring his application.

Conclusion

The tenant is awarded a total of \$108.81, which represents \$50.00 as a penalty, \$33.81 wrongfully withheld for overholding and \$25.00 for the filing fee. I grant the tenant a monetary order under section 67 for this sum. This 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: February 04, 2013

Residential Tenancy Branch

