



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 and an order for the return of his security deposit. Both parties participated in the conference call hearing.

The landlord had submitted evidence in which he attempted to advance a monetary claim. At the hearing, I advised the landlord that I could not consider his claim because he had not submitted a formal application for dispute resolution.

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 August 1, 2009 and ended on November 30, 2012. They further agreed that the tenant paid a \$369.00 security deposit on July 20, 2009. The tenant claimed that he paid a \$391.00 pet deposit in July 2010, but while the landlord agreed that a pet deposit had been paid at that time, he was not sure that the amount was \$391.00 as claimed by the tenant.

The landlord acknowledged having received the tenant's forwarding address in writing and the parties agreed that on or about December 14th, the tenant received from the landlord a cheque for \$519.00 which represented a partial return of his deposits.

The tenant seeks to recover double the deposits in addition to an award to penalize the landlord for forcing him to proceed to arbitration.

Analysis

The parties were in a previous dispute resolution hearing on January 10, 2012 at which time the Arbitrator found that the tenant had paid a \$361.00 pet deposit on July 7, 2010. Although the tenant claimed that this was an error, he did not apply to the Residential Tenancy Branch for a correction of that error and I find that I am bound by that finding of fact. I therefore find that the landlord had a total of \$752.00 in deposits which represents a \$391.00 security deposit and a \$361.00 pet deposit.

I find that when the landlord returned \$519.00 to the tenant on December 14, 2012, he returned all of the security deposit and \$128.00 of the pet deposit, leaving a balance of \$233.00 which was withheld from the pet deposit.

Section 38 of the Residential Tenancy Act provides that within 15 days of the later of the end of the tenancy and the date the landlord receives the tenant's forwarding address in writing, the landlord must either return security and pet deposits in full or file a claim to retain the deposits. I find that the landlord wrongfully withheld \$233.00 of the pet deposit.

Section 38(6) provides that a landlord who wrongfully withholds monies from deposits is liable to pay the tenant double the amount of the deposits.

The total amount of the pet deposit was \$361.00 and the landlord wrongfully withheld \$233.00. I find that the tenant is entitled to recover the amount which was withheld as well as the amount of the original deposit as a penalty pursuant to section 38(6). I award the tenant \$594.00.

I dismiss the claim for a penalty to be levied against the landlord. While I appreciate the tenant's frustration at having to repeatedly pursue arbitration against the landlord, there is no provision in the Act whereby a litigant is awarded monies other than their filing fee for the aggravation of having to pursue litigation.

As no claim was made to recover the filing fee, I have not addressed that issue.

Conclusion

The tenant is awarded \$594.00 and I grant the tenant a monetary order under section 67 for that 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: March 25, 2013

Residential Tenancy Branch

