



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Esto Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This is an application filed by the Tenant for a monetary order for the return of double the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. The Landlord has confirmed receipt of the submitted documentary evidence. The Landlord did not submit any documentary evidence. The Tenant has submitted a copy of a Canada Post Registered Mail Receipt dated February 10, 2013 and a copy of the online tracking report as confirmation of service. I accept the undisputed testimony of both parties and find that each has been properly served with the notice of hearing package and the Tenant's submitted documentary evidence.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order?

Background and Evidence

Both parties agreed that the Tenant vacated the rental unit on either December 30th or December 31st of 2012. Both parties agreed that a \$775.00 security deposit was paid by the Tenant. Both parties further agreed that the Landlord received the Tenant's forwarding address in writing dated January 17, 2013 on January 18, 2013 by Canada Post Registered Mail. The Tenant has provided a copy of the Canada Post Registered Mail Receipt and a copy of the online tracking report to confirm this.

The Landlord states that upon receiving the Tenant's forwarding address in writing on January 18, 2013 that a cheque for \$550.00 was sent to the Tenant. The Landlord states that \$225.00 was withheld for not professionally cleaning the carpet. The Tenant disputes this stating that she has not received any such cheque and that she has not given any permission to withhold anything for cleaning. The Landlord states that

someone from head office sent the \$550.00 cheque to the Tenant on February 12, 2013.

Analysis

Section 38 of the Residential Tenancy Act states,

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [*service of documents*] or give the deposit personally to the tenant.

The Tenant vacated the rental unit at the end of December 2012. The Landlord did not return the \$775.00 security deposit to the Tenant within 15 days of the end of the Tenancy or when the forwarding address in writing was received on January 18, 2013. The Landlord has failed to provide sufficient evidence to satisfy me that the Landlord returned any of the security deposit.

I find based upon the Landlord testimony that he withheld the \$775.00 security deposit without permission of the Tenant or through that of an order from the Residential Tenancy Branch. The Tenant has established a monetary claim for \$1,550.00. The Tenant is also entitled to recovery of the \$50.00 filing fee. The Tenant is granted a monetary order for \$1,600.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Tenant is granted a monetary order for \$1,600.00.

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: May 01, 2013