



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Golden Sun Trading Company
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant – MNSD

For the landlord – MNSD, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied for a Monetary Order to recover double the security deposit. The landlord applied for an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for the return of double the security deposit?
- Is the landlord entitled to an Order to keep the security deposit?

Background and Evidence

The parties agree that this tenancy started on August 01, 2012 for a fixed term which expired on January 31, 2013. The tenancy then reverted to a month to month tenancy. Rent for this unit was \$695.00 per month and was due on the first day of each month in advance. The tenant paid a security deposit of \$350.00 on July 27, 2012. The tenancy ended on March 31, 2013

The tenant testifies that she does not recall attending a move in inspection with the landlord but testifies that it is her signature on the report under the quick settlement section and dated July 27, 2012. The tenant testifies that when she moved out the landlord said the place looked fine and the landlord would just have to paint a section of wall that the tenant had repaired. The tenant testifies that she agreed verbally to pay for this painting and for the carpet cleaning. The tenant testifies that she had vacuumed the carpets but the landlord wanted to have them cleaned. The tenant testifies that she had verbally agreed the landlord could deduct \$30.00 or \$40.00 for carpet cleaning. The tenant testifies that she was not given two opportunities to attend a move out inspection and has not signed a move out inspection report.

The tenant testifies that she wrote to the landlord on May 08, 2013 and requested the landlord return the security deposit. This letter also contained the tenants forwarding address. The tenant testifies that she had also given the landlord her forwarding address when she returned the keys on the day she moved out of March 31, 2013. The tenant testifies that the landlord did return \$55.00 by cheque with a copy of the inspection forms. A copy of this cheque has been provided in evidence and is dated May 01, 2013. The tenant received this cheque on May 12, 2013.

The tenant requests that the security deposit is doubled as the landlord did not return it within 15 days of receiving the tenants forwarding address. The tenant also suggests that the landlord has extinguished his right to keep the security deposit as the landlord failed to do a move out inspection with the tenant at the end of the tenancy.

The tenant agrees at the hearing that the landlord may keep \$100.00 to paint the wall and \$75.00 for the carpet cleaning.

The landlord testifies that the tenant did provide written notice to end the tenancy on February 28, 2013. This Notice was effective for March 31, 2013. The landlord testifies that at the end of the tenancy the tenant did not inform the landlord she was leaving and the landlord found the keys left on the kitchen work top.

The landlord testifies that the tenant did not provide a forwarding address at the end of the tenancy and the landlord could not contact the tenant to attend the move out inspection. The landlord testifies that as soon as he received the tenants forwarding address on May 8, 2013 the landlord returned the balance of the security deposit after deductions of \$150.00 for repairing and painting the wall, \$75.00 for carpet cleaning and \$15.00 for a hood air filter were deducted. The landlord testifies that this left a balance of \$55.00 which the landlord returned to the tenant as soon as the tenant provided her forwarding address in writing.

The landlord testifies that at the start of the tenancy the tenant did attend the walk through inspection with the landlord. The landlord testifies that the tenant signed this report in the wrong place and when the landlord noticed this a few days later he indicated this by drawing a line from the tenants signature to the place on the form the tenant should have signed.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. From the documentary evidence provided I find the tenant's signature on the move in section of the inspection report is dated for July 27, 2012 and is likely that the tenant signed this report in the wrong place as testified by the landlord. However concerning the move out inspection; when a tenant provides written notice to a landlord and that notice has an effective date that the tenant will vacate the unit, then it is the

landlords responsibility to arrange the move out inspection with the tenant on the day the tenant vacates the unit or another mutually agreed upon day before new tenants move in. A landlord is required to give the tenant two opportunities to attend an inspection pursuant to s. 35(2) of the *Residential Tenancy Act (Act)*. If the landlord fails to comply with s. 35(2) of the *Act* then pursuant to s. 36(2) of the *Act* the landlord has extinguished his right to file a claim to keep the security deposit.

In that event the landlord must return the security deposit, unless the tenant has agreed in writing that the landlord may keep all or part of the security deposit, within 15 days of receiving the tenants forwarding address in writing or the end of the tenancy whichever is the later date.

In this case the landlord agrees he received the tenants forwarding address in writing on May 08, 2013. Therefore the landlord had until May 23, 2013 to return the tenants security deposit. As the landlord retained a portion of the security deposit without the tenants written consent and only returned \$55.00 of the security deposit then the tenant is entitled to recover double the security deposit pursuant to s. 38(6)(b) of the *Act*.

As the tenant has agreed at the hearing that the landlord may keep \$100.00 for painting and \$75.00 for carpet cleaning then these amounts will be deducted from the tenant's monetary award. Furthermore, I will also deduct the amount of \$55.00 as this amount has been returned to the tenant by the landlord. The tenant will therefore receive a Monetary Order for the following amount:

Double the security deposit	\$700.00
Less painting and carpet cleaning	(\$170.00)
Less amount already returned	(\$55.00)
Total amount due to the tenant	\$475.00

Conclusion

I HEREBY FIND in partial favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$475.00**. The order must be served on the landlord and is enforceable through the Provincial Court as an order of that Court.

The landlord's application is dismissed without leave to reapply.

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: October 10, 2013

Residential Tenancy Branch

