



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and the landlord.

Both parties provided substantial testimony regarding the amounts the landlord retained from the deposit, however, as this hearing was not to adjudicate an Application for Dispute Resolution submitted by the landlord for any losses suffered as a result of the tenancy I have not considered this testimony as relevant to this Application. The landlord remains at liberty to file his own Application for any such losses, in accordance with the *Residential Tenancy Act (Act)*.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for return of double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The landlord provided a copy of a portion of a tenancy agreement between the parties for a 1 year fixed term tenancy beginning on June 1, 2012 that converted to a month to month tenancy on June 1, 2013 for a monthly rent of \$1,550.00 with a security deposit of \$775.00 paid.

The tenant acknowledges receipt of a portion of the security deposit returned by the landlord in the amount of \$400.00. The tenant submits that the landlord withheld the balance of \$375.00.

The landlord submits documentary evidence stating that the tenant vacated the rental unit on May 30, 2013; that the tenant sent an email to the landlord on May 31, 2013 requesting the security deposit be sent to him; and that on June 1, 2013 the landlord mailed the tenant a cheque.

The landlord also provided evidence to confirm the amount of the cheque was \$400.00. The landlord has provided a declaration stating the tenant owes the landlord for hydro and propane in the amount of \$342.84 and for garbage removal of \$32.16.

Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

As such, it is not sufficient for the landlord to unilaterally retain any amounts from a security deposit at the end of a tenancy. If the landlord believes the tenant owes him for any losses suffered as a result of the tenancy the landlord must, within the 15 days noted above, either obtain written agreement from the tenant that the landlord may withhold all or a portion of the deposit toward that loss or file an Application for Dispute Resolution to claim against the deposit.

As the landlord, in this case, as not filed an Application for Dispute Resolution seeking to claim against the deposit nor has either party provided any evidence of an agreement in writing for the landlord to retain any portion of the deposit, I find the landlord has failed to comply with Section 38(1) and the tenant is entitled to double the deposit, pursuant to Section 38(6).

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,600.00** comprised of \$1,550.00 double the security deposit and the \$50.00 fee paid by the tenant for this application.

I order the landlord may deduct the \$400.00 already returned to the tenant in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,200.00** for the balance owed to the tenant.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: September 24, 2013

Residential Tenancy Branch

