



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an application by the tenant seeking an order for the return of double the security deposit and an order to recover their filing fee. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is the tenant entitled to the return of double the security deposit?
Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenancy began on or about March 1, 2012 and ended on April 30, 2013. Rent in the amount of \$1250.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$625.00.

The tenant gave the following testimony:

The tenant stated that this tenancy began with the previous owner who neglected to conduct a move in condition inspection report. The tenant stated that on March 28, 2013 they provided the landlord notice that they would be moving out by April 30, 2013. The tenant stated that the subject landlord did not conduct a move out condition inspection report. The tenant stated that they provided their forwarding address in writing by hand delivering it to the landlord on May 10, 2013. The tenant stated that the landlord has returned \$300.00 of the deposit but has withheld the remaining \$325.00 without the tenants' permission or without an order from the Branch.

The landlord gave the following testimony:

The landlord stated that they agreed with the majority of the tenants' testimony. The landlord stated that the reason \$325.00 was withheld was due to the excessive number of screw holes in the walls and the requirement for painting the suite. The landlord submitted a receipt to support their position.

Analysis

It was explained in great detail to the landlord the obligation to conduct condition inspection reports at the start and end of tenancy. The landlord acknowledged that she was unaware of the legislation at the time but has since been informed on the matter. The landlord felt that she had legitimate claims for damages. It was explained to the landlord that she was at liberty to file a separate application for dispute resolution if there are remaining outstanding issues between the parties that cannot be resolved and that today's decision would only deal with the application before me. She indicated that she understood.

Section 38 of the Act address the issue before me:

Section 38 (1) says that 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.

And Section 38 (6) says 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.

The landlord did not comply as required above. I find that the tenant is entitled to the return of double the security deposit $\$625.00 \times 2 = \1250.00 minus the $\$300.00$ previously paid by the landlord for a total of $\$950.00$.

As for the monetary order, I find that the tenant has established a claim for $\$950.00$. The tenant is also entitled to recovery of the $\$50.00$ filing fee. I grant the tenant an order under section 67 for the balance due of $\$1000.00$. 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 monetary order for $\$1000.00$.

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: September 03, 2013

Residential Tenancy Branch

