



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, FF

Introduction

This hearing concerns the tenant's application for a monetary order reflecting the double return of the security deposit / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenant is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, tenancy began on September 1, 2010. Monthly rent of \$2,300.00 was due and payable in advance on the first day of each month. A security deposit of \$1,150.00 was collected on August 16, 2010, and a "lawn deposit" of \$300.00 was collected on September 6, 2012. The parties agree that while a form of move-in condition inspection report was completed, a copy is not in evidence.

Tenancy ended August 31, 2013, and a move-out condition inspection was completed on September 1, 2013. A move-out condition inspection report was not completed.

By letter sent via registered mail on September 19, 2013, the tenant provided the landlord with a forwarding address and requested the return of the security deposit and "lawn deposit." Thereafter, the landlord withheld \$578.30 from the combined deposits of \$1,450.00, and mailed a cheque dated September 28, 2013 to the tenant for the balance of \$871.70. The \$578.30 withheld by the landlord is comprised as follows:

\$10.00: 2 unreturned keys (2 x \$5.00)
\$11.38: vent cover in living room
\$63.00: lawn cut
\$106.40: replace patio door screen
\$203.77: final water bill
\$183.75: rug shampoo and odor removal

Analysis

The attention of the parties is drawn to the following particular sections of the Act:

Section 23: **Condition inspection: start of new tenancy or new pet**

Section 24: **Consequences for tenant and landlord if report requirements not met**

Section 35: **Condition inspection: end of tenancy**

Section 36: **Consequences for tenant and landlord if report requirements not met**

As well, section 63 of the Act speaks to the **Opportunity to settle dispute**, and provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion during the hearing led to agreement that the landlord would withhold **\$213.77** from the security deposit, as follows:

\$203.77: final water bill
\$10.00: 2 unreturned keys (2 x \$5.00)

Total: **\$213.77**

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit, or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

Section 1 of the Act defines "security deposit" as follows:

"security deposit" means money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting the residential property, but does not include any of the following:

- (a) post-dated cheques for rent;
- (b) a pet damage deposit;
- (c) a fee prescribed under section 97(2)(k) [*regulations in relation to fees*];

Based on the documentary evidence and testimony, I find that the “lawn deposit” forms part of the security deposit. I further find that the landlord neither repaid the full security deposit, nor filed an application to retain all or a portion of it, within 15 days after being informed in writing by the tenant of a forwarding address. Accordingly, I find that the tenant has established entitlement as follows:

\$2,900.00 [(2 x \$1,150.00) + (2 x \$300.00)]: *the doubling provisions of the Act*

MINUS	\$871.70: <i>amount of security deposit already repaid</i>
	+ <u>\$213.77</u> : <i>amount agreed to during the hearing, as above</i>
Total:	\$1,085.47

Balance of security deposit owed:

\$1,814.53 (\$2,900.00 - \$1,085.47)

As the tenant has succeeded with his application, I find that he has also established entitlement to recovery of the **\$50.00** filing fee.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$1,864.53** (\$1,814.53 + \$50.00). Should it be necessary, this order may be served on the landlord, filed in the Small Claims 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: December 23, 2013

Residential Tenancy Branch

