



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This was an application by the tenant for the return of his security deposit including double the deposit amount. The hearing was conducted by conference call. The tenant and the landlord participated in the hearing.

Issue(s) to be Decided

Is the tenant entitled to the return of his security deposit, or some portion thereof, including double the amount?

Background and Evidence

The rental unit is a house in Whistler. The tenancy began on October 1, 2012. I was not provided with a copy of a tenancy agreement, although the landlord said that a written lease agreement had been created. Monthly rent was \$3,500.00 payable on the first day of each month. The tenant testified that he paid a security deposit in the total amount of \$2,750.00. The amount paid apparently included a \$1,000.00 cleaning deposit required by the landlord as a condition of the tenancy.

The tenant shared the rental unit with other occupants. He moved out of the rental unit on May 31, 2013. The tenant testified that he provided the landlord with his forwarding address at the time of move out and again by e-mail. The documents submitted by the tenant showed that on June 4, 2013 the landlord returned the sum of \$1,835.00 to the tenant by way of an electronic bank transfer to his account.

The landlord collected amounts for a security deposit and a supposed cleaning deposit that exceeded the amount permitted to be collected as a security deposit pursuant to the *Residential Tenancy Act*. Section 19 of the *Act* provides that a landlord may not

require or accept a security deposit that is greater than the equivalent of $\frac{1}{2}$ of one month's rent payable under the tenancy agreement. Also a landlord may not require or accept more than one security deposit in respect of a tenancy agreement. The fact that the landlord characterized part of the deposit that she accepted as a cleaning deposit, does not alter the fact that she breached the provisions of the legislation by requiring payment of a deposit in an amount that was greater than permitted. For the purposes of this application, the whole sum paid will be regarded as the security deposit held by the landlord.

The landlord referred to a document submitted by the tenant. She testified that the rent was reduced for the summer season from \$3,500.00 per month to \$2,700.00 per month and the deposit that she held was reduced to reflect the lower rent. The tenant did not receive a refund from the landlord, but the rent paid for April and May was \$2,600.00 each month, instead of \$2,700.00. The landlord also contended that she was entitled to a further \$200.00 deduction from the security deposit for the costs of snow removal. The landlord claimed that the tenant did not clean the rental unit, caused damage, including damage to the locks in the rental unit. The landlord testified that she suffered financial losses that justified the deduction she kept from the tenant's security deposit, but the landlord did not return the security deposit in full and she did not file an application for dispute resolution to claim the deposit.

The tenant acknowledged at the hearing that the total deposit amount held by the landlord should be deemed to have been reduced by \$200.00 due to the reduced rent paid for April and May. He agreed that the deposit held at the end of the tenancy should be considered to have been \$2,550.00 and that the sum of \$1,835.00 was returned within 15 days, leaving a shortfall of \$715.00. The tenant claimed a monetary award of double that amount.

Analysis

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit.

I am satisfied that the tenant provided the landlords with his forwarding address in writing, and I find that the tenant served the landlords with documents notifying the landlord of this application as required by the *Act*.

Only a portion of the tenants' security deposit was refunded within 15 days as required by section 38(1) of the *Residential Tenancy Act* and the doubling provision of section 38(6) therefore applies. I find that the tenants are entitled to an award in the amount of double the security deposit that the landlords held after the expiry of the 15 day period; this was the sum of \$715.00 I grant the tenant's application and award him the sum of \$1,430.00, being double the amount of the security deposit held by the landlord after the 15 day period. The tenant is entitled to recover the \$50.00 filing fee for this application for a total claim of \$1,480.00 and I grant the tenant a monetary order against the landlord in the said amount. This order may be registered in the Small Claims Court and enforced as an order of that Court.

If the landlord intends to pursue a monetary claim against the tenant, she will have to file her own application for dispute resolution.

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 20, 2013

Residential Tenancy Branch

