



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 for a monetary order to recover the balance of her security deposit and to recover the RTB filing fee.

The tenant and the landlord's brother both participated in the teleconference hearing and gave affirmed evidence.

Issue(s) to be Decided

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The tenant gave evidence that the parties entered into a tenancy agreement starting October 1, 2012. The tenant was obligated to pay \$650.00 rent in advance on the first day of the month. The tenant also paid a \$450.00 security deposit.

The tenant's evidence is that she and the landlord completed a walk-through inspection of the rental unit before she moved in. They did not complete a Condition Inspection Report.

The tenant gave evidence that her tenancy ended August 31, 2013. Her evidence is that she and the landlord completed a walk-through inspection of the rental unit on the day she returned the key to him. They did not complete a Condition Inspection Report. The tenant's evidence is that they did not observe any damage to the rental unit and the landlord told her he would mail her the security deposit the following week. The tenant states she provided her new address to the landlord in writing shortly before she moved out.

The tenant gave evidence that she did not receive her security deposit and, after two weeks, she telephoned the landlord. She said the landlord told her he had had to do some plumbing and replace the toilet after she moved out, because the water would not stop running.

The tenant provided a copy of a document titled "Reconciliation of Damage Deposit Being Returned" she states she received from the landlord. The document lists the following:

Toilet (new)	117.59
Plumber Labor	80.00
Suite clean up	50.00
Suite vacated & emptied out	
1 day late	<u>25.00</u>
	272.59
Net Refund	\$ 177.41

The tenant's evidence is that there were no problems with the toilet during her tenancy. She states she would have noticed if the toilet ran on and on, and she would have informed the landlord.

The landlord's representative states that water usage to the house spiked during the tenancy. He said the City of Surrey detected high water usage and conducted an inspection. He was not certain whether the inspection was conducted during the tenancy. The inspection revealed that the toilet in the suite had developed a slow leak and water was continuously flowing.

The landlord's representative gave evidence that the toilet was about 5 or 6 years old. He guessed that a rubber valve may have worn out. He thought the landlord may have replaced the entire toilet because it was cheaper to do so than to replace only the valve.

The tenant gave evidence that the City of Surrey did not conduct an inspection during her tenancy. She states that she did not move out a day late. Rather, she moved out on August 31, 2013 but came back on September 1, 2013 to do the walk-through and return the keys.

Analysis

The process for the return of security deposits is set out in Section 38 of the Act. Pursuant to Section 38(1), the landlord must either repay the security deposit or apply for dispute resolution to make a claim against the security deposit within 15 days of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing (whichever is later). Alternatively, pursuant to Section 38(4)(a), a landlord may retain all or part of a security deposit if the tenant agrees in writing.

In this case, I find the tenancy ended on August 31, 2013. The landlord did not apply for dispute resolution to make a claim against the security deposit within 15 days. Also, the tenant did not agree in writing to the retention of any part of the security deposit. The landlord is therefore obligated to return the entire security deposit to the tenant.

According to Section 38(6), a landlord who fails to follow Section 38(1) must pay the tenant double the amount of the security deposit. In this case, the landlord failed to repay the tenant the amount of \$272.59 from her damage deposit. The tenant is therefore entitled to an order for twice that amount, which is \$545.18. The tenant is also entitled to recover her RTB filing fee of \$50.00 from the landlord.

I grant the tenant an order under Section 67 for \$595.18. This order may be filed in Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order of \$595.18.

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: February 17, 2014

Residential Tenancy Branch

