



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Midwest Property Management & Woodland Park Townhomes
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, FF

This hearing dealt with an application by the tenant for a monetary order and an order to have double the security deposit returned. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Is the tenant entitled to double the security deposit?

Background, Evidence and Analysis

The tenancy began on October 31, 1986 and ended on October 31, 2013. The tenants were obligated to pay \$1178.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$100.00 security deposit.

The tenant is the sole applicant in this matter. I address the tenant's claims and my findings around each as follows.

First Claim – The tenant is seeking the return of double the security deposit. The tenant stated that she provided her forwarding address in the early part of December 2013. The tenant stated that a move in condition inspection report was conducted at the

beginning of the tenancy but not at move out. The tenant stated that the property manager and she met on October 31, 2013 to commence the inspection. The tenant stated that both parties agreed to postpone it till the following day to allow the tenant more time to clean the unit. The tenant stated that she returned the following day to finish the inspection report. The tenant stated that she was denied access, was given her vacuum cleaner that she had left behind and asked to leave. The tenant made calls to the office over a period of time and she was told that they would not be returning her deposit as they had incurred costs to clean the unit.

The landlord stated that she was just hired at the time this incident had occurred. The landlord stated that the company had felt there were some costs to clean the unit and felt that the tenant wasn't entitled to the deposit. I asked the landlord as to why an application was not filed and she responded "I was new and didn't know what to do at that time, if we have to pay double that's fine"

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.

As the landlord failed to return the deposit or file an application for dispute resolution, the tenant is entitled to return of double the deposit of \$100.00 X 2 + \$85.40 of accrued interest = \$285.40.

Second Claim – The tenant is seeking \$9800.00 for the replacement of vintage clothing. The tenant stated that through some miscommunication with the person that assisted her to move, she left several bags of vintage clothing in the suite at move out. The tenant stated that she believes the property manager threw her clothes away. The tenant stated that she was frantically looking for these clothes for over a month. The tenant stated that when she attended the landlords' office a month later to provide her forwarding address she was confronted by the property manager that made a remark "I should charge you \$200.00 for throwing out those bags". The tenant stated that she had been collecting those clothes since she was six years old and doesn't understand why someone would do that.

The landlord stated that they adamantly dispute this portion of the tenants' application. The landlord stated that there were no bags of clothes left behind in the suite.

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,

3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Based on the above, the tenant has not satisfied me on all four grounds as required; specifically grounds 1-3. I dismiss this portion of the tenants' application. As the tenant has been only partially successful in her application she is entitled to the recovery of \$50.00 of her filing fee.

Conclusion

The tenant has established a claim for \$335.40. I grant the tenant an order under section 67 for the balance due of \$335.40. This order may be 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: May 08, 2014

Residential Tenancy Branch

