



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order to recover part of the security deposit and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlord attended the conference call hearing and gave sworn testimony. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order to recover part of the security deposit?

Background and Evidence

The parties agree that this month to month tenancy started on April 15, 2013. The tenant was a subtenant for this unit under her own tenancy agreement which the tenant's landlord rented from the owners. The tenant's rent for this unit was \$800.00 per month and was due on the first day of each month in advance. The tenant paid a security deposit of \$400.00 on April 15, 2013. The tenancy ended on December 01, 2013.

The tenant testified that the landlord has failed to return the security deposit within 15 days of receiving the tenant's forwarding address in writing. The tenant testified that the forwarding address was provided to the landlord on December 17, 2013.

The tenant testified that she had agreed in writing that the landlord could deduct some costs from the security deposit for utilities of \$127.43 and for a broken plant pot of \$110.74. The tenant also later agreed in writing that the landlord could deduct \$25.00 for cleaning. The tenant testified that the landlord should have sent the tenant a cheque for the balance of the security deposit within 15 days of receiving the tenant's forwarding address. The landlord sent the tenant a cheque for \$86.83. The tenant testified that she put that cheque through the shredder. The tenant testified that as the landlord did not return the entire balance of the security deposit of \$136.83 the tenant seeks to have this amount doubled.

The landlord agreed that she did receive the tenant's forwarding address in writing. The landlord testified that she had told the tenant that she would return part of the security deposit and the rest would be returned when the landlord got the bills. Once the landlord received the breakdown for the bills the tenant consented to the deductions. There was an additional amount deducted for \$75.00 for cleaning and the tenant did consent to pay part of this.

Analysis

Section 38(1) of the *Residential Tenancy Act (Act)* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenant's forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Therefore, based on the above and the evidence presented I find that the landlord did receive the tenant's forwarding address in writing on December 17, 2013. As a result, the

landlord had until January 01, 2014 to either return the balance of the security deposit of \$136.83 that the tenant had not agreed in writing that the landlord could keep or to have filed an application to keep it. As the landlord failed to do these things and only returned \$86.83, the tenant has established a claim for the return of double the balance of the security deposit to an amount of **\$273.66**, pursuant to section 38(6)(b) of the *Act*. As the tenant has not cashed the cheque sent to her by the landlord for \$86.83 this will not be deducted from the tenant's monetary award. The tenant has testified that that cheque has been destroyed. If the tenant finds the cheque has not been destroyed then the tenant must return the cheque to the landlord and is not entitled to cash it.

The tenant is also entitled to recover the **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$323.66**. The order must be served on the Respondent and is enforceable through the Provincial Court 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 16, 2014

Residential Tenancy Branch

