



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, MND,

Introduction

This was a hearing with respect to applications by the tenant and by the landlord. The hearing was conducted by conference call. The tenant and the landlord called in and participated in the hearing. The tenant applied for the return of her security deposit, including double the amount. The landlord applied for a monetary award for repairs, cleaning and unpaid rent.

Issue(s) to be Decided

Is the tenant entitled to the return of her security deposit, including double the amount?
Is the landlord entitled to a monetary award and if so, in what amount?

Background and Evidence

The rental unit is a strata title apartment in Port Moody. The tenancy began on April 1, 2013 on a month to month basis with monthly rent in the amount of \$825.00 payable on the first of each month. The tenant paid a security deposit of \$412.50 on March 7, 2013.

The tenant testified that there were problems in the rental property, including some leakage or flooding problems from other units. Because of these problems the tenant chose to move out. She paid rent for January, 2014. The landlord and the tenant signed a mutual agreement to end the tenancy effective January 28, 2014 and the tenant moved out pursuant to the agreement. The tenant provided the landlord with her forwarding address in writing when she signed the mutual agreement to end the tenancy.

After she moved out the tenant received an e-mail from the landlord dated February 7, 2014. In the e-mail the landlord said that she intended to deduct the following amounts from the tenant's security deposit:

- \$75.00 for light fixtures that the tenant deducted from January rent.
- \$75.00 for steam cleaning carpets
- \$100.00 to complete painting in the hallway and kitchen

The tenant did not agree with the landlord's proposed deductions, save for the amount for carpet cleaning, and on February 22, 2014 the tenant applied for the return of her deposit. She later amended her application to claim the return of double her deposit. The landlord testified that she sent a cheque to the tenant in the amount of \$162.50. the cheque was dated February 12, 2014 and the landlord said that was the date that she mailed it to the tenant. The tenant testified that she received the cheque in late February, after she had filed her application for dispute resolution. The tenant cashed the cheque after she received it.

The landlord filed her application for a monetary award and an order to retain the security deposit on May 30, 2014.

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.

The tenant provided the landlord with her forwarding address in writing on January 28, 2014. The tenant agreed to a \$75.00 deduction from the security deposit for carpet cleaning, but she did not agree in writing to any deduction from the deposits.

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 tenant is entitled to an award in the amount of double the security deposit that the landlord held after the expiry of the 15 day period;

this was the sum of \$250.00. I grant the tenant's application and award her the sum of \$500.00, 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 \$550.00. I do not make any award for rent reimbursement on account of the fact that the tenant moved out before the end of January.

I find that the landlord is entitled to a monetary award for the cost of carpet cleaning in the amount of \$75.00 as claimed. I find that the landlord is also entitled to recover the sum of \$75.00 that the tenant deducted from her January rent payment for lights that she removed when the tenancy ended. I do not allow the landlord's claim for re-painting in the absence of any condition inspection reports. The landlord is entitled to recover the \$50.00 filing fee for her application, for a total award of \$200.00.

Conclusion

Pursuant to section 72 of the *Residential Tenancy Act*, I set off the award in favour of the landlord against the amount awarded to the tenant. This leaves an amount due to the tenant of \$350.00 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.

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: June 19, 2014

Residential Tenancy Branch

