



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OLC

Introduction

This hearing dealt with an application by the tenant for a monetary order for the return of the balance of her security deposit and pet deposit.

Both the landlord and tenant attended 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 parties agree the tenancy started on August 15, 2013 and ended on February 1, 2014. The tenant paid a security deposit of \$600.00 and a pet deposit of \$600.00, totalling \$1,200.00.

The tenant says she provided her forwarding address to the landlord in writing on January 10, 2014 and again on January 27, 2014.

The parties agree that the landlord provided three partial payments for the return of the tenant's pet deposit and security deposit:

February 2, 2014	800.00
February 20, 2014	121.25
May 22, 2014	<u>100.00</u>
	\$ 1,021.25

At the date of the hearing, the landlord still retained an amount of \$178.75. The landlord gave evidence that the tenant agreed that the landlord could retain an amount of \$165.00 in an email dated February 3, 2014.

The February 3, 2014 email exchange between the parties was put into evidence. The tenant states in her 9:04 a.m. email: "165.00 I think would be a reasonable and fair amount to be kept ..." The tenant based the \$165.00 figure on \$75.00 for carpet cleaning, \$26.00 for interior cleaning, and \$60.00 for yard cleaning (which totals \$161.00). The landlord's email response does not accept the tenant's proposal of \$165.00. The tenant's subsequent email response is to say she will go to the RTB.

At the hearing, the tenant agreed to pay \$75.00 for carpet cleaning since there was a stained area on the carpet. The landlord provided a receipt for \$78.75 for this work. The tenant did not agree to any other deductions at the hearing.

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 February 1, 2014. The landlord did not apply for dispute resolution to make a claim against the security deposit within 15 days or at all. Also, the tenant did not agree in writing to the retention of any part of the security deposit. I find that while the tenant proposed in her February 3, 2014 email that the landlord retain \$165.00 as a final settlement, the landlord did not accept that proposal. It was therefore not an "agreement" by the tenant within the meaning of Section 38(4)(a).

The landlord was therefore obligated to return the entire security deposit to the tenant. The landlord returned only \$800.00 prior to the expiration of the 15 day period, retaining a balance of \$400.00.

According to Section 38(6), a landlord who fails to follow Section 38(1) must pay the tenant double the amount of the deposit. In this case, the landlord failed to repay the tenant the amount of \$400.00 from her security and pet deposits. The tenant is therefore entitled to twice that amount, which is \$800.00.

After the expiration of the 15 day period, the landlord made two further payments of \$121.25 and \$100.00. Deducting these from the \$800.00 amount leaves a balance owing the tenant of \$578.75.

At the hearing, the tenant said she would agree that the landlord retain \$75.00 for the cost of carpet cleaning. The tenant is therefore due \$578.75 less \$75.00 which is \$503.75.

I grant the tenant an order under Section 67 for \$503.75. 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 for \$503.75.

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: July 11, 2014

Residential Tenancy Branch

