



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 in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for return of the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions under oath. The Witness provided evidence under oath.

Issue(s) to be Decided

Is the Tenant entitled to return of the security deposit?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: The tenancy started on December 1, 2014 and ended on May 31, 2014. The Tenant’s forwarding address was provided in writing on May 31, 2014. At the outset of the tenancy the Landlord collected \$425.00 as a security deposit and \$425.00 as a pet deposit. Both Parties mutually conducted a move-in and move-out inspection. The Tenant was provided a copy of the move-in inspection and the move-out inspection was not provided to the Tenant until delivered by the Landlord as evidence for this dispute. The Landlord has not returned the security and pet deposit

and has not made an application for dispute resolution to claim against the security deposit. The Tenant owes the Landlord \$20.00 for damage to the blinds.

The Tenant states that although the move-out inspection report was signed by the Tenant indicating an agreement to deductions, the Tenant states that the copy she signed did not contain any amounts agreed to but did note that the final amount for repairs would be determined in June. The Tenant states that she did agree to the \$20.00 deduction as initialled earlier in the report. The Landlord states that the amounts of the security and pet deposit were filled in by the Landlord to indicate the amounts that were being held as a deposit but that the Landlord did not know how much would be deducted. The Landlord states that at the time the costs for repairs were unknown.

The Tenant claims return of double the security deposit.

Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. This section also provides that a landlord may retain an amount from a security deposit or a pet deposit if at the end of a tenancy the tenant agrees in writing that the landlord may retain the amount.

Given the Landlord's evidence that the amount being sought to deduct for the repairs was not determined at the time the Tenant signed the move-out report and considering the Tenant's evidence that no amounts were indicated as agreed deductions on the move-out report other than the \$20.00, I find on a balance of probabilities that the Tenant did not agree in writing to any amount of a deduction other than the deduction of \$20.00. As such the Landlord is entitled to retain \$20.00 from the security deposit leaving a balance of \$405.

As the Landlord has not returned the remaining amount of the security deposit or the \$425.00 pet deposit to the Tenant or made an application to claim any additional amount from the security or pet deposit, I find that the Landlord must repay the Tenant double the remaining combined security and pet deposit in the amount of **\$1,690.00** ($405 + 425 \times 2$). As the Tenant has been successful with its application I find that the Tenant is also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$1,740.00**.

Conclusion

I Grant the Tenant an Order under Section 67 of the Act for the amount of **\$1,740.00**. If necessary, 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: October 28, 2014

Residential Tenancy Branch

