



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF, O

Introduction

This hearing was convened by way of a conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant for the return of double the amount of her security deposit and to recover the filing fee.

An agent for the Landlord (the “Landlord”) and the Tenant appeared for the hearing. Both parties provided affirmed testimony. The Landlord confirmed receipt of the Tenant’s Application but both parties denied receipt of each other’s documentary evidence provided prior to the hearing.

As a result, I examined the parties’ documentary evidence and I determined that I would only refer to copies of identical documents which had been provided by both parties.

Issue(s) to be Decided

Is the Tenant entitled to the return of double the amount of the security deposit?

Background and Evidence

The Landlord and Tenant agreed that this tenancy started on March 1, 2014 for a fixed term of one year. However the tenancy ended on May 31, 2014.

Rent under the tenancy agreement was payable by the Tenant in the amount of \$750.00 on the first day of each month. The Tenant paid the Landlord a security deposit of \$400.00 on February 2, 2014.

The Tenant testified that she provided the Landlord with a forwarding address in writing by e-mail on June 15, 2014. The Landlord acknowledged the Tenant’s forwarding address in an e-mail response on June 16, 2014. Shortly after, the Landlord made a

deduction from the Tenant's security deposit in the amount of \$59.59 and returned \$340.41 back to the Tenant in the form of a cheque to the Tenant's forwarding address.

The Tenant testified that she did not consent to this deduction and even though she had informed the Landlord of her obligation to make an Application to get authorization to make the deduction, the Landlord did not. As a result, the Tenant seeks double the amount back in accordance with the *Residential Tenancy Act* (the "Act").

The Landlord did not dispute the Tenant's testimony and acknowledged that the Tenant's forwarding address had been received and that a deduction had been made because the Tenant failed to clean the oven and there were some minor damages as evidenced by an invoice provided in written evidence. The Tenant denied that the Landlord discussed these deductions with her and did not consent to them being made from her security deposit.

Analysis

Section 38(1) of the Act states 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 back to the Tenant or make an Application to claim against it. The Act also allows the Landlord to make a deduction from the Tenant's security deposit if they have the Tenant's consent in writing.

While e-mail is not an approved form of service under the Act, I find that the Landlord did receive the Tenant's forwarding address on June 16, 2014 by email. The Landlord also used this address to mail a cheque back to the Tenant for a partial amount of the Tenant's security deposit. As a result, I find that the Landlord failed to deal with the Tenant's security deposit in accordance with the provisions of the Act.

Section 38(6) of the Act states that if a Landlord does not comply with Section 38(1) of the Act, the Landlord **must** pay the Tenant double the amount of the deposit.

Therefore, the Tenant is entitled to the return of double the amount of the \$400.00 security deposit paid at the start of the tenancy, totaling **\$800.00**. There is no interest payable on the security deposit.

As the Tenant has been successful in this Application, the Tenant is entitled to recover the filing fee of **\$50.00** from the Landlord, pursuant to Section 72(1) of the Act.

Therefore the total amount owed to the Tenant is **\$850.00**. As the Landlord has already returned \$340.41 to the Tenant, the total amount outstanding to the Tenant is **\$509.59**.

Conclusion

For the reasons set out above, I grant the Tenant a Monetary Order, under Section 67 of the Act, for the balance due of **\$509.59**.

Copies of the Monetary Order are attached to the Tenant's copy of this decision. This order must be served on the Landlord and if the Landlord fails to make the payment, the Tenant may enforce the order in the Small Claims 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: January 06, 2015

Residential Tenancy Branch

