



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cyclone Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, O, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order for recovery of her security deposit. The applicant also claimed for the recovery of the cost of appliances like Microwave, Deep fryer, Toaster and beds due to cockroaches in the kitchen and bedrooms. The hearing was conducted via teleconference and was attended by the tenant and the landlord's agent.

Issue(s) to be Decided

Whether the tenant is entitled to a monetary order for all or part of the security deposit or other claims; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord admitted service of the application for dispute resolution which was amended before service on January 21, 2015. The tenant testified the tenancy began on August 15, 2013 with a move in incentive reducing the initial rent of \$ 840.00 for the first few months by \$ 50.00 then ultimately the rent was increased to \$ 840.00 by October 2013. The tenancy ended on December 15, 2014 when the tenant moved out although the tenant paid rent for all of December. The tenant testified that she paid security deposit of \$ 420.00 on July 8, 2013. The tenant testified that she never signed or received a written tenancy agreement. The tenant testified that the landlord had not conducted a move in nor move out inspection.

The tenant testified that she gave her written notice to end the tenancy on November 15, 2014 and in the same note advised the landlord of her new address. The tenant testified that on January 26, 2015 she received partial refund of her security deposit

from the landlord in the amount of \$ 295.00. The submits that she never permitted the landlord to make any deductions to her security deposit.

The landlord's agent VR testified that he received a note from the tenant advising of her new address on January 22, 2015. He denied receipt of any earlier notice. VR testified that all of the landlord's tenancy agreements provide that the tenant is responsible for the cost of professionally cleaning the carpets. VR admitted that he could not find any written tenancy agreement with the tenant and that he was not the manager at the time of commencement of her tenancy. VR testified that around January 26, 2015 the landlord returned the security deposit less \$ 125.00 which was the cost of cleaning the carpet.

Analysis

I find that the tenant gave her testimony in a matter of fact and straightforward manner. I therefore accept her evidence throughout. Considering the tenant's credibility and the admission by the landlord's agent, I find that there was not any written tenancy agreement and therefore no agreement by the tenant to pay for the cost of carpet cleaning.

Section 38(4) states that the landlord may retain an amount from a security deposit or a pet damage deposit if at the end of a tenancy, if the tenant *agrees* in writing the landlord may retain the amount to pay a liability or obligation of the tenant. As I have no evidence before me that the landlord had any written agreement from the tenant at the end of or the beginning of tenancy regarding the retention of part of the security deposit, I find the landlord had no authority to retain any amount from the security deposit.

Section 38(1) of the *Act* stipulates that the landlord must, within 15 days of the end of the tenancy or receipt of the tenant's forwarding address, return the security deposit to the tenant or file an Application for Dispute Resolution to claim against the security deposit for any damage or loss the landlord may have incurred.

I find that the tenancy ended on December 15, 2014. To be compliant with Section 38(1) the landlord would have to return **all** of the security deposit to the tenant, within 15 days of the date that the tenant provided her forwarding address. Whether the tenant provided her address on December 15, 2014 as the tenant insists or January 22, 2015 as the landlord alleges the landlord has not complied with section 38 in time and in any event by the date of this hearing.

I find that as the landlord failed to comply with section 38 (1) I award the tenant double \$ 420.00 the amount of the security deposit held pursuant to section 38(6) amounting to \$ 840.00 less the \$ 295.00 for a total claim of \$ 545.00. The tenant is also entitled to recovery of her filing fee amounting to \$ 50.00.

The tenant did not make any submissions or supply any evidence regarding her claim for the cost of appliances and beds. I have dismissed with leave to reapply that portion of her application.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$ 595.00** comprised of double the security deposit; less \$ 295.00 and the \$50.00 fee paid by the tenant for this application. I have dismissed all other applications made by the tenant with leave to reapply. This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: February 10, 2015

Residential Tenancy Branch

