



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened in relation to the tenant's application for return of her security deposit in the amount of \$400.00 and recovery of her filing fee.

The tenant and the landlord appeared. Neither party raised any service issues.

At the hearing, the landlord stated that she believed that she had a claim against the tenant in the amount of \$245.00. There is no claim yet filed by the landlord.

Analysis

At the beginning of the hearing, I explained to the parties that there are two ways in which matters that come before the Residential Tenancy Branch (the Branch) can be disposed: (1) mediation pursuant to section 63 of the *Residential Tenancy Act* (the Act); and (2) adjudication pursuant to section 62 of the Act.

Pursuant to section 63 of the Act, an arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

At the hearing, I explained section 38 of the Act to the parties. I have reproduced this section in part for the parties' benefit:

- 38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
- (a) the date the tenancy ends, and
 - (b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit...
- (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
 - (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant,
 - ...
- (5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.
- (6) If a landlord does not comply with subsection (1), the landlord
 - (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable...

The landlord extended an offer to the tenant for return of \$155.00 from the security deposit and that the landlord would retain \$245.00 of the deposit for repairs and cleaning. The tenant accepted this offer.

I explained to the tenant what she was accepting and what this would mean for her. The tenant confirmed that she wished to accept this offer.

As is my practice, I restated the terms of the agreement and ensured the parties understood the terms of the agreement. Each party stated she did understand the terms. I asked the parties individually if she agreed to enter into that agreement.

The landlord initially did not agree that she was entering into a settlement. The landlord stated that this was the offer she had always extended to the tenant and did not understand why this was an agreement. I explained to the landlord that the Act permits me to assist the parties in reaching an agreement and that the agreement can be recorded as a decision of this Branch. I informed the landlord that it was her choice

whether or not to enter into a settlement registered as a decision of this Branch, but that the alternative is adjudication. The landlord agreed to enter into the settlement.

As a result of the negotiations in this hearing, the parties reached the following agreement:

1. The tenant agreed to withdraw her application.
2. The tenant agreed the landlord could retain \$245.00 from the tenant's security deposit.
3. The landlord agreed to return \$155.00 to the tenant.
4. The landlord and tenant agreed that no further applications by either party would be brought in respect of this tenancy, which has ended.

Each party stated she understood that this agreement was a full, final and binding settlement of all disputes between the parties in respect of this tenancy.

Conclusion

The tenant's application is withdrawn.

I issue a monetary order in the tenant's favour in the amount of \$155.00. The tenant is provided with a monetary order in the above terms and the landlord(s) must be served with this order as soon as possible. Should the landlord(s) fail to comply with these orders, these orders may be filed in the Small Claims Division of the Provincial Court and enforced as orders of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: June 22, 2015

Residential Tenancy Branch