



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

The tenant applies for return of a security deposit, doubled pursuant to s. 38 of the *Residential Tenancy Act* (the “Act”) and return of a key fee.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the tenant is entitled to any of the relief claimed?

Background and Evidence

The rental unit is a one bedroom condominium apartment. The tenancy started in January 2014 and ended in or around the end of November 2014. The rent was \$1650.00 per month. The landlord received and holds an \$825.00 security deposit and a \$300.00 key fee.

The tenant sent the landlord her forwarding address in writing on January 21, 2015. The landlord, who lives abroad, acknowledges that her parents, living in BC, received it for her at her BC address.

She has not returned the security deposit because she feels that the tenant left some picture holes in the walls and stained a carpet with nail polish. She has not yet made any claim against the tenant for those items.

The landlord is under the impression that her parents returned the \$300.00 key fee to the tenant in early December 2014 when the tenant returned the keys to them.

In response, the tenant noted that both the deposit and key fee were referred to as being still owed in the tenant’s January 21, 2015 letter to the landlord. She denies receiving the key fee from the landlord’s parents in December 2014.

Analysis

Section 38 of the *Act* requires that once a tenancy has ended and once the tenant has provided a forwarding address in writing, a landlord must, within fifteen days, either repay the deposit to the tenant or make application to keep all or a part of it. If a landlord fails to meet that time limit, she must account to the tenant for double the deposit.

The landlord has not done so here. At present the landlord has no legal right to retain the security deposit. The tenant is entitled to its return. The landlord has breached s. 38 and the tenant is entitled to the return of double the deposit; an amount of \$1650.00.

As it is a tenant's obligation to prove payment of rent, it is a landlord's obligation to prove repayment of a fee or deposit. She has not proved repayment here. I find that the tenant has not received the \$300.00 key fee and is entitled to recover it. The key fee is not a deposit as defined by the *Act* and so the doubling provision in s. 38 does not apply.

Conclusion

The tenant's application is allowed. She is entitled to a monetary award of \$1950.00 plus recovery of the \$50.00 filing fee. There will be a monetary order against the landlord in the amount of \$2000.00.

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: June 11, 2015

Residential Tenancy Branch

