



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 by conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant on November 28, 2014 for the return of the balance of her security deposit.

The Tenant appeared for the hearing with an advocate to assist her as she was struggling with her eyesight. An agent for the Landlord appeared for the hearing with the resident manager of the rental unit building. The parties all provided affirmed testimony.

The Landlord’s agent confirmed that she had received the Tenant’s Application and the Tenant’s documentary evidence. The Landlord stated that she had produced a one page invoice into written evidence on July 2, 2015 by fax. I informed the Landlord’s agent that this evidence was not before me, likely because it had been submitted after the deadlines set out in Rule 3.15 of the Rules of Procedure. The Tenant also denied being served with a copy of this evidence and the Landlord stated that this was likely because it was still in the process of being transported to the Tenant. As the Landlord failed to provide this evidence in accordance with the Rules of Procedure, I informed the Landlord that I would not be considering this evidence during the hearing.

The Landlord confirmed that she had received the Tenant’s forwarding address in writing on September 25, 2015 which was contained in the Tenant’s notice to end tenancy. The parties agreed that the tenancy ended on October 31, 2015 and that the Landlord had made a deduction from the Tenant’s security deposit of \$457.50 in the amount of \$212.94.

The Tenant explained that she cashed the returned cheque sent to the forwarding address provided by her to the Landlord; however she did not consent to this deduction made by the Landlord and hence why she made the Application. The Landlord referred to the last section of the move out Condition Inspection report and stated that the Tenant had signed to consent to the deduction. On examination of this section, it had

not been fully completed and it was not clear what deductions were being made from the security deposit, for what reasons they were being made (e.g. carpet cleaning, drape cleaning), and the balance due to the Tenant. Furthermore, the Landlord provided no clear evidence which showed that the Tenant had consented to the Landlord making a deduction of \$212.94 from the Tenant's security deposit.

The Landlord also argued that the tenancy agreement stipulated that they could make deductions from the Tenant's security deposit if the Tenant failed to professionally steam clean the carpets. In this respect, the Landlord was informed of Section 20 (e) of the *Residential Tenancy Act* (the "Act") which prohibits a landlord from requiring or including a term of a tenancy agreement that the landlord automatically keeps all or part of the security deposit at the end of the tenancy agreement.

The Landlord confirmed that she had not made an Application to make the deductions from the Tenant's security deposit. The Landlord was also informed of the doubling penalty provided by Section 38(6) of the Act as well as Policy Guideline 17 which provides guidance on the return or retention of security deposit through Arbitration, in particular under section 3 of this guideline.

However, the Tenant indicated that she was willing to settle the matter with the Landlord through mutual agreement. The Landlord agreed that this was the best resolution in this matter.

Settlement Agreement

Pursuant to Section 63 of the Act, the 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.

Both parties agreed to settle the Tenant's Application in full with the Landlord's agent agreeing to return the remaining balance of the Tenant's security deposit including the filing fee in the amount of **\$294.56**. The Landlord is cautioned to retain documentary evidence in relation to the payment made to meet the above terms and conditions.

The Tenant is issued with a Monetary Order in the amount of **\$294.56** which is enforceable in the Small Claims court **if** the Landlord fails to make payment in accordance with this agreement. Copies of this order are attached to the Tenant's copy of this decision.

This agreement and order is fully binding on the parties and is in **full and final satisfaction of all the issues** associated with this tenancy. No further Applications are permitted and this file is now closed.

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: July 07, 2015

Residential Tenancy Branch

