



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an Application by the Tenants for a monetary order for return of double the security deposit paid to the Landlord and for the return of the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Preliminary Matter

At the outset of the hearing the Landlord confirmed the Tenant had erroneously noted her name on the application by inverting her first and last name. I amend the Tenant's Application for Dispute Resolution pursuant to section 64(3)(c) to correctly note the Landlord's name on this my decision and resulting Order.

Issues to be Decided

1. Has there been a breach of Section 38 of the Act by the Landlord entitling the Tenant to return of double the security deposit paid?
2. Should the Tenant recover her filing fee?

Background and Evidence

Although a residential tenancy agreement was submitted in evidence by the Landlord, the Tenant submitted that this was a fabricated document. The Tenant also confirmed that the Landlord altered the one page tenancy agreement which was agreed upon at the start of the tenancy. The parties disagreed as to the date the tenancy started, whether rent was payable on the 1st of the month or on some other day, and whether the monthly rental period was from the 1st of the month to the last day of the month or from the 22nd of each month to the 21st of the next month. As this does not relate to the issue before me, I make no findings in this regard.

Although the parties disagreed as to when the security deposit was paid, they did agreed that the Tenants paid the Landlord a security deposit of \$425.00. The Tenants vacated the premises on March 22, 2015. A copy of the Tenant's written notice to end the tenancy, dated on February 21, 2015 was introduced in evidence. This letter also contained the Tenant's written notice of the forwarding address to return the security deposit to.

The Tenant did not sign over a portion of the security deposit.

The Tenants testified that the Landlord did not perform an incoming condition inspection report. The Tenants further testified that the Landlord did not attend at the rental unit for the outgoing condition inspection report. The Landlord testified that she had performed both an income and outgoing condition inspection report. She stated that she had submitted this report in evidence. That report was not available to me.

The Landlord claimed the Tenant had left the rental unit without paying the appropriate amount of rent for March 2015. She further testified that she retained \$225.00 from the Tenant's security deposit of \$425.00 as she felt that amount was owed for the March 2015 rent. As such, she returned only \$200.00 of the security deposit. She also provided the Tenant \$50.00 representing compensation for the dishwasher in the rental unit not working for a period of time.

Introduced in evidence was a document created by the Landlord which suggested the security deposit was \$437.50 and which she reduced by \$248.00. The Landlord confirmed this document was erroneous.

Both parties agreed that the Landlord had returned \$200.00 of the Tenant's security deposit such that she retained \$225.00. The Tenant sought return of double that

amount, namely \$450.00 in addition to the recovery of the \$50.00 fee paid to file her application.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord is in breach of the Act.

There was no evidence to show that the Tenant had agreed, in writing, that the Landlord could retain any portion of the security deposit. There was also no evidence to show that the Landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, as required under section 38.

The security deposit is held in trust for the Tenant by the Landlord. At no time does the Landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. If the Landlord and the Tenant are unable to agree to the repayment of the security deposit or to deductions to be made to it, the Landlord must file an Application for Dispute Resolution within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later. In this case the Landlord did not apply for dispute resolution.

The Landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator, or with the written agreement of the Tenant. Here the Landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the Landlord is not entitled to retain any portion of the security deposit.

I note that the Landlord submitted evidence with respect to her claim that rent was outstanding for March 2015; however, as noted during the hearing, the Landlord is unable to make a monetary claim through the Tenants' Application. The Landlord may still file an application for alleged rent and alleged losses; however, the issue of the security deposit has now been conclusively dealt with in this hearing.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenant the sum of **\$500.00**, comprised of double the remaining security deposit (2 x \$225.00) and the \$50.00 fee for filing this Application.

Conclusion

The Tenant is given a formal Order in the above terms and the Tenant must serve the Landlord with a copy of this Order as soon as possible. Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and 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: October 07, 2015

Residential Tenancy Branch

