



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MSND, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to return double the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background, Evidence

The tenant's testimony is as follows. The tenancy began on November 1, 2015 and ended on January 29, 2016. The tenants were obligated to pay \$4900.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$2450.00 security and \$2450.00 pet deposit, although the landlord only noted it as a security deposit on the tenancy agreement. A move in and move out written condition inspection report was conducted. The tenant testified that the landlord wanted to charge him \$134.38 to replace blinds. The tenant testified that he never agreed to that cost as the blinds were already damaged at move in. The tenant stated that he agreed that \$50.00 should be deducted from the deposit for some additional cleaning. The tenant testified that he

provided the landlord his forwarding address and returned the keys on January 29, 2016. The tenant testified that the unit was completely empty and cleaned on that day. The tenant testified that he received a cheque from the landlord for \$4715.62 on February 17, 2016. The tenant re-iterated that he did not authorize any deductions save and except \$50.00. The tenant requests the appropriate award for the landlord breaching Section 38 of the *Act*.

The landlord gave the following testimony. The landlord testified that the relationship between her and the tenant was a very good one. The landlord testified that the tenant initially wanted to extend the fixed term tenancy but then changed his mind. The landlord testified that the tenant broke the blind and that she wanted him to pay for it. The landlord testified that she did receive the keys on January 29, 2016 and that the unit was clean and empty.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my finding are set out below.

The tenant said he is applying for the return of double the security deposit as the landlord has not complied with the s. 38 of the *Residential Tenancy Act*.

Section 38 (1) says that 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.

And Section 38 (6) says **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.

Based on the above, I find that the landlord did not have the tenants' authorization or an order from the Branch to retain any of the deposit. In addition, the landlord did not file an application to seek to retain any portion of the deposit, or return it to the tenant within the timelines in accordance with the above Section. I find that the tenant is entitled to the return of double the security deposit $\$4900.00 \times 2 = \9800.00 plus the \$100.00 filing fee minus the \$50.00 for cleaning = \$9850.00.

Applying the \$4715.62 that the tenant has already received the tenant is entitled to a final award of \$5134.38.

Conclusion

The tenant has established a claim for \$5134.38. I grant the tenant an order under section 67 for the balance due of \$5134.38. This order may be filed in the Small Claims 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 04, 2016

Residential Tenancy Branch