



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for return of all or part of the pet damage deposit or security deposit; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the landlord attended the call. The tenant testified that the hearing package was served on the landlord by registered mail on September 26, 2016 and has provided a copy of a Canada Post cash register receipt bearing that date as well as a Registered Domestic Customer Receipt addressed to the landlord. I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlord for return of all or part of the security deposit?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for double the amount of the security deposit?

Background and Evidence

The tenant testified that this month-to-month tenancy began on May 25, 2016 and ended on September 1, 2016. No written tenancy agreement exists, however rent in the amount of \$980.00 per month was payable on the 1st day of each month and the tenant paid a proportionate amount for the first month of the tenancy. There are no rental arrears.

The tenant further testified that on May 25, 2016 the landlord collected a security deposit from the tenant in the amount of \$490.00. The tenant sent to the landlord a letter which contained the tenant's forwarding address on June 21, 2016 along with 2 rent cheques which the landlord has cashed. The landlord returned \$420.00 to the tenant along with a document entitled "Security Deposit Refund Form," dated September 15, 2016 showing a deduction of \$70.00. The tenant testified that he did not agree to any deductions, and the landlord has not returned the balance of \$70.00 to the tenant.

Analysis

The *Residential Tenancy Act* states that a landlord must return a security deposit in full to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an application for dispute resolution claiming against the deposit within that 15 day period. If the landlord fails to do either, the landlord must repay double, unless the tenant has agreed in writing that the landlord retain any portion of it.

I also refer to Residential Tenancy Policy Guideline 17 – Security Deposit and Set-Off, which states, in part:

3. The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:
 - Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.
The arbitrator doubles the amount paid as a security deposit ($\$400 \times 2 = \800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is \$525.00 ($\$800 - \$275 = \525).

In the absence of any evidence to the contrary, I accept the testimony and evidentiary material provided by the tenant, and I find as follows:

- The tenancy ended on September 1, 2016;
- The landlord is deemed to have received the tenant's forwarding address in writing on June 26, 2016, being 5 days after mailing it;
- The landlord had until September 16, 2016 to return the security deposit in full or make an application for dispute resolution claiming against it;

- The landlord did not return the entire deposit and did not make an application for dispute resolution claiming against the security deposit;
- The tenant did not agree in writing that the landlord retain any portion of the security deposit;
- The amount of the security deposit was \$490.00 and doubled is \$980.00;
- The landlord returned \$420.00, leaving \$560.00 owed to the tenant.

Since the tenant has been successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$660.00.

This order is final and binding and may be enforced.

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: December 14, 2016

Residential Tenancy Branch