



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

- authorization to obtain a return of all or a portion of the security deposit, including double the amount, pursuant to section 38;
- a monetary order for compensation for loss pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide sworn testimony, present evidence and to make submissions.

Issues

Is the tenant entitled to a return of all or a portion of the security deposit, including double the amount?

Is the tenant entitled to a monetary award for loss?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenancy began on December 1, 2014 with a monthly rent of \$1800.00 payable on the 1st day of each month. The tenant paid a security deposit of \$900.00 at the start of the tenancy. The tenancy ended on June 30, 2016 and the landlord was provided a forwarding address in writing on July 4, 2016. On July 5, 2016 the landlord returned \$642.75 of the security deposit. A condition inspection was not completed upon move-in. The landlord testified it was due to poor management on his part.

The tenant is claiming double the security deposit arguing that the landlord failed to return the security deposit in full within 15 days of the date the landlord received the tenants forwarding address in writing.

The tenant is also claiming cleaning costs incurred by the tenant and loss of use of the rental unit during showings of the unit by the landlord's real estate agent. The tenant submits the landlord asked her to clean the unit prior to each showing and asked her to vacate during the showings.

The landlord argues the tenant agreed in writing for the landlord to retain the remainder of the security deposit for cleaning costs.

With respect to the tenants claim for cleaning costs, the landlord argues he only asked the tenant to clean the rental unit and did not require her to do so. In addition, the landlord argues he did not ask for the rental unit to be cleaned beyond a reasonable state.

Analysis

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. A landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit, pet deposit, or both, as applicable.

As the landlord failed to complete a condition inspection report at the start of tenancy, the landlord's right to retain any amount from the security deposit for damages, through written agreement of the tenant, does not apply as per section 38(5) of the Act.

I find the tenant did provide a forwarding address in writing to the landlord. The tenant's security deposit was not refunded in full within 15 days as required by section 38 of the Act and the doubling provisions of section 38 therefore apply.

I allow the tenants claim for return of the security deposit and award an amount of **\$1157.25**, which is double the original security deposit of \$900.00 less the amount of \$642.75 returned to the tenant.

The tenants claim for cleaning costs and vacating the rental unit for showings is dismissed as the tenant has not shown that the landlord contravened the Act resulting in the tenant suffering this loss. I find the landlord only requested the tenant to clean and vacate the rental unit for showings. The tenant was required to comply with the landlord's request to vacate. And section 32(2) of the Act requires the tenant maintain reasonable health, cleanliness and sanitary standards throughout the rental unit.

As the tenant was only partially successful in this application, I find that the tenant is entitled to recover one half of the \$100.00 filing fee paid for this application from the landlord for a total monetary award of **\$1207.25**.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order in the amount of **\$1207.25**. Should the landlord fail to comply with this Order, this 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: February 21, 2017

Residential Tenancy Branch