



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, O, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant.

The tenant testified and provided documentary evidence to confirm the landlord was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on October 6, 2016 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5th day after they have been mailed.

Based on the testimony and evidence of the tenant, I find that the landlord has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for return of a fee for insufficient funds; for all or part of the security deposit and pet damage deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The tenant submitted into evidence a copy of a tenancy agreement signed by the parties on July 15, 2015 for a 1 year fixed term tenancy beginning on August 1, 2015 for a monthly rent of \$1,150.00 due on the 1st of each month with a security deposit \$575.00 and a pet damage deposit of \$575.00 paid. The tenant submitted the tenancy ended by July 31, 2016. The testified she had provided the landlord with her forwarding address in writing before the end of the tenancy on April 30, 2016.

The tenancy agreement includes a 1 page addendum that contains 7 additional terms. I note that neither the tenancy agreement nor the addendum contain any clauses identifying that the landlord will collect a fee for either the late payment of rent or for

administrative or bank charges in the event of a cheque being returned for insufficient funds.

The tenant also submitted a type written document dated September 15, 2016 from the landlord outlining what the landlord believed the tenant owed her for utility charges and for damage to and/or cleaning of the rental unit, in the amount of \$2,814.14.

The document offers to settle by having the tenant sign the document agreeing to allow the landlord to retain the security and pet damage deposits and for the tenant to provide the landlord with a bank draft or cash for an additional \$1,350.00 to settle all accounts. The document is not signed by the tenant.

The tenant testified that she has not received either deposit back from the landlord as of the date of this hearing.

The tenant also submitted into evidence a copy of a letter from the landlord dated April 11, 2016 where the landlord advises the tenant that because of her rent cheque for the month of April 2016 was returned the tenant now owed the landlord the outstanding rent and an additional \$75.00 as a service charge for the returned cheque by April 12, 2016.

Analysis

Section 7(1) of the Residential Tenancy Regulation states a landlord may charge, subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent. Section 7(2) states that a landlord must not charge such a fee unless the tenancy agreement provides for that fee.

As there are no terms in either the tenancy agreement or the addendum that indicate that the landlord will charge any fee for bank returned cheques, I find the landlord is not able to collect any such fee. I order the tenant is entitled to return of the full amount of \$75.00.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

As there is no evidence before me that the landlord ever filed an Application for Dispute Resolution claiming against either deposit and the tenant has provided undisputed testimony that the landlord has not returned either the security or pet damage deposit, I find the landlord has failed to comply with her obligations under Section 38(1) of the *Act*. As a result, I find the tenant is entitled to double the amount of both deposits, pursuant to Section 38(6).

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$2,475.00** comprised of \$2,300.00 double the security and pet damage deposits; \$75.00 return of service charge and the \$100.00 fee paid by the tenant for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: March 30, 2017

Residential Tenancy Branch