



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OLC

Introduction

On October 3, 2016, the Tenant submitted an Application for Dispute Resolution for the Landlord to return of all or part of the pet damage deposit or security deposit, and for the Landlord to comply with the Act.

The matter was scheduled as a teleconference hearing. Both parties attended the hearing.

The hearing process was explained and the parties were asked if they had any questions. The Landlord and Tenant 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 oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Tenant entitled to the return of the security deposit?

Background and Evidence

The parties testified that the tenancy started in January 2104. Rent in the amount of \$1,486.25 was due on the first day of each month. The Tenant paid the Landlord a security deposit of \$725.00.

The Tenant moved out of the rental unit on September 1, 2016. The parties participated in a move out inspection, but the Tenant did not sign the condition report.

The Tenant testified that she was in agreement to pay for a wall repair but a specific amount was not agreed upon. The Tenant testified that there was no written agreement with the Landlord that he could retain any amount from the security deposit.

The Tenant testified that there were no previous hearings where an Arbitrator ordered that the Landlord could withhold repayment of the security deposit.

The Tenant testified that the Landlord returned \$165.80 to her via email money transfer on September 14, 2016.

The Landlord testified that he did not return the full amount of the security deposit because the Tenant left the rental unit dirty and damaged. The Landlord confirmed that he never applied for dispute resolution to make a claim against the security deposit.

The Tenant testified that she is only seeking to recover the balance of \$559.20 and does not seek to have the Landlord pay double the amount of the deposit that was not returned.

Analysis

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

Section 38 (1) of the Act states that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must repay any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the Landlord failed to return the full security deposit to the Tenant and did not apply for dispute resolution within 15 days of receiving the Tenant's forwarding address.

I find that there was no written agreement that the Landlord could retain any amount the security deposit.

I find that the Landlord breached section 38 of the Act. Pursuant to section 38 of the Act, the Landlord must pay the Tenant the balance of the security deposit

I order the Landlord to pay the Tenant the amount of \$559.20.

I grant the Tenant a monetary order in the amount of \$559.20. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Landlord failed to return the security deposit to the Tenant in accordance with the legislation.

I grant the Tenant a monetary order in the amount of \$559.20.

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: April 04, 2017

Residential Tenancy Branch