



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, OLC, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for the return of the security deposit - Section 38;
2. A Monetary Order for compensation - Section 67;
3. An Order for the Landlord’s compliance - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amount claimed?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are undisputed facts: The tenancy started on November 15, 2010. Rent of \$2,100.00 was payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$1,050.00 as a security deposit, \$900.00 as a pet deposit, and \$100.00 as a fob deposit. Between January 26 and January 30, 2017 the Tenant was given a two month notice to end tenancy for landlord’s use (the “Notice”). On January 28, 2017 the Tenant gave notice to end the tenancy for February 19, 2017 and the Tenant did move out on that date. Full rent of \$2,200.00 was paid by the

Tenant for February 2017. The Parties mutually conducted both a move-in and move-out inspection. The Landlord did not provide the Tenant with an equivalent amount of rent in lieu of the Notice.

The Tenant claims \$2,200.00 as the equivalent amount of rent in lieu of the Notice. The Landlord states that the rent was only \$2,150.00 as of January 2017 when the Notice was given and had only been increased to \$2,200.00 for February 2017. The Tenant states that he paid rent of \$2,200.00 for over a year prior to the end of the tenancy. The Tenant stated that he has banking records to show this amount was payable.

The Tenant states that on move-out the Parties agreed that the Landlord would:

- refund the Tenant \$707.00 for the 9 days that the Tenant did not occupy the unit in February 2017;
- provide a full refund of the pet and security deposit less an agreed amount of \$200.00 for cleaning costs; and
- provide a refund of the \$100.00 fob deposit.

The Tenant provides a hand written receipt setting out this agreement between the Parties, with their signatures and the date February 19, 2017 and indicating that the Landlord would return a total of \$2,562.00. The Tenant agrees that there was a slight mathematical error and that the agreed amount should have been \$2,557.00. The Tenant states that the Landlord then later took the Tenant by surprise by making out a cheque for only \$2,363.00 with a \$200.00 deduction from the deposits for a strata fine. The Tenant states that he did not agree to any such deduction and received no information about a strata fine. The Tenant states that he does not waive any entitlement to return of double the security and pet deposit.

The Landlord states that he made the extra \$200.00 deduction because of a strata fine for garbage. The Landlord states that the Tenant verbally agreed to this deduction and could have refused the cheque. The Landlord states that the Tenant left the unit walls

damaged by using tape to hang pictures and that the unit had to be repainted. The Landlord states that the unit had previously been painted prior to the start of the tenancy.

Analysis

Section 51 of the Act provides that a tenant who receives a notice to end a tenancy for landlord's use of property is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. Although the Landlord's oral evidence is that the rent payable in January 2017 was only \$2,150.00, given the undisputed evidence that rent for February 2017 was \$2,200.00 I find that this is the amount of rent for which the Landlord must pay the equivalent. Based on the undisputed evidence that no amount was paid to the Tenant I find on a balance of probabilities that the Tenant has substantiated an entitlement to **\$2,200.00**.

Section 38 of the Act provides 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 the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Section 38(4) of the Act provides that a landlord may retain an amount from a security deposit or a pet damage deposit if at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.

As the Parties originally agreed in writing to only a \$200.00 deduction and although the Landlord gave evidence of an oral agreement for a further \$200.00 deduction, I accept that no other agreement in writing was made for any other deduction than the original \$200.00. The Landlord should have returned \$1,750.00 for the combined security and pet deposit to the Tenant but only returned \$1,550.00. As the Landlord did not return the full amount agreed upon, as there is no written agreement from the Tenant to withhold an amount greater than \$200.00 and as the Landlord did not make any

application to claim against the security deposit for any amount greater than was agreed, I find that the Landlord must now pay the Tenant double the combined pet and security deposit of **\$1,950.00** and that the Tenant is therefore entitled to the amount of **\$3,900.00**. As the Tenant has already received the amount of **\$1,550.00** I deduct this amount from the entitlement leaving **\$2,350.00** remaining owed to the Tenant.

As the Tenant's application has met with success I find that the Tenant is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$4,650.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$4,650.00**. If necessary, 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: May 24, 2017

Residential Tenancy Branch