



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, OLC, FF

Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the tenant served the landlord with the notice of hearing package and the tenant's submitted documentary evidence via Canada Post Registered Mail on February 23, 2017. The landlord did not submit any documentary evidence. Neither party raised any issues with service. I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of the security deposit and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties agreed that this tenancy ended on November 30, 2016 and that a security deposit of \$550.00 was paid. A condition inspection report for the move-out was completed by both parties on November 30, 2016.

The tenant seeks the return of the original \$550.00 security deposit and recovery of the \$100.00 filing fee.

The landlord disputed the tenant's claim stating that she had an outstanding issue with the tenancy as supported by the completed condition inspection report for the move-out dated November 30, 2016. It states in part,

The only area of concern is the smell of pot in the house. I will be changing the carpet to laminate and remove the curtains and painting. If further work is required I will have to take from the damage deposit.

[Reproduced as written]

The landlord stated that she wrote this statement and was under the impression that this was permission from the tenant to retain the security deposit. The landlord did not provide any further details of what occurred after November 30, 2016 regarding the security deposit or the rental premises.

The tenant reiterated that she did not give permission to the landlord to retain the security deposit. Both parties confirmed that the landlord was provided her forwarding address in writing as part of the tenant's application for dispute. Both parties also agreed that the landlord did not make an application to dispute the return of the security deposit.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or receipt of the tenant's forwarding address in writing.

In this case, both parties confirmed that the tenancy ended on November 30, 2016 and that the tenant provided her forwarding address in writing to the landlord with her application for dispute filed on February 22, 2017. Both parties have confirmed that the landlord still holds the \$550.00 security deposit and that the landlord has not made an application to dispute its return.

The landlord has claimed that permission was granted by the tenant for the landlord to retain the \$550.00 security deposit. This is disputed by the tenant. The landlord has relied upon the written notation on the completed condition inspection report for the move-out. In reviewing the notation, I find that the statement was written by the landlord and does not explicitly provide permission by the tenant to the landlord to retain the security deposit. It is instead a statement by the landlord informing the tenant that the landlord will withhold the security deposit pending a determination of possible damage to the rental premises. I also note that the statement does not provide for a specified amount or a date of agreement. As such, I find that this statement does not constitute permission by the tenant to allow the landlord to withhold the security deposit. As such, the tenant's application for return of the \$550.00 security deposit is successful.

As the tenant has been successful in her application for dispute, I order recovery of the tenant's \$100.0 filing fee.

Conclusion

The tenant is granted a monetary order for \$650.00.

This order must be served upon the landlord. Should the landlord fail to comply with the order, the 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: July 27, 2017

Residential Tenancy Branch