



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OLC, RPP

Introduction

The tenant applies to recover a \$700.00 security deposit. Though her claim also seeks a compliance order and an order for return of property, those two claims were not pursued at this hearing.

The landlord has filed material in the nature of a counterclaim seeking recovery of a \$105.00 strata move-out fee and a \$210.00 strata charge for failure to inform the strata of a move-out. Counterclaims are not a procedure permitted in these proceedings. To pursue a separate or offsetting claim a respondent is required to bring his own application for dispute resolution with a view to having the claims dealt with at the same hearing.

In this instance, the tenant consents to dealing with the landlord's two claims at this hearing, and so they were.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Is the tenant entitled to recover her deposit money? Is she entitled to the doubling penalty imposed by s. 38 of the *Residential Tenancy Act* (the “Act”)? Is the landlord entitled to either strata charge?

Background and Evidence

The rental unit is a two bedroom “plus den” condominium apartment. The tenancy started in July 2016 for a one year term at a monthly rent of \$1400.00. The tenant paid a \$700.00 security deposit.

The tenant moved out in June and provided the landlord with a forwarding address in writing before the end of June.

The landlord informed her that she would be responsible for a \$105.00 charge imposed by the Building Owners’ Association (the strata) pursuant to its building rules for a “move out fee.

The tenant does not dispute that fee.

The landlord also informed the tenant she would be responsible for a \$210.00 charge imposed by the Association as a fine for “unreported move out of tenants.” The building rules, which form part of the tenancy agreement, state:

69. All moves in and out of the Building must be coordinated and scheduled with the Lessor or the Lessor’s property manager at least five (5) business days in advance of the move-in or move-out.

82. The Lessor may fine a Homeowner, tenant or occupant up to a maximum of two hundred dollars (\$200) for each contravention of a Building Rule unless otherwise expressly stated in these Building Rules.

The landlord says it was the tenant's responsibility to inform the strata that she was moving out. She didn't and so she should pay the fine.

The tenant says the landlord is the "Lessor" referred to in the rules and so he should pay the fine.

Analysis

This decision was rendered orally at the hearing.

I find that Rule 69 imposes an obligation on the tenant and not the landlord to inform the strata that she is moving out. The lessor referred to in the rules is the strata (or its agent) and not the landlord, who is the "homeowner."

To interpret the rule otherwise would impose a duty on the landlord to inform the strata on five days notice of his tenant moving out when, as here, he did not know when she was moving out, or at least, he did not know with any certainty. He may have known when the tenancy officially ended, but the tenant, or any tenant is at liberty to move out before then, as this tenant did.

I find that the tenant owes the landlord the \$210.00 fine.

The tenant is entitled to recover her \$700.00 security deposit. It is clear that the landlord has kept the deposit in violation of s. 38 of the *Act*. That section requires that once a tenancy has ended and once the tenant has provided her forwarding address in writing, the landlord must, within fifteen days, either repay the deposit money or make an application for dispute resolution to keep all or a portion of it. In the event the landlord fails to comply with this section, he is penalized by having to account to the tenant for double the amount of the deposit.

In this case the tenant has not requested the doubling penalty in her application. Residential Tenancy Policy Guideline 17 "Security Deposit and Set off [*sic*]" provides that an arbitrator is to award the doubling even when not requested unless the tenant waives the doubling at the hearing. The tenant declined to waive the doubling penalty at this hearing.

Conclusion

The tenant is entitled to a monetary award of \$1400.00, being double the amount of her security deposit. There is no claim for recovery of any filing fee.

The landlord is entitled to an award of \$315.00.

I grant the tenant a monetary order for the difference of \$1085.00.

The tenant is in receipt of a \$385.00 cheque from the landlord, given about two weeks ago. She is free to cash that cheque, in reduction of the amount granted in the monetary order.

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: October 12, 2017

Residential Tenancy Branch