



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, FFT

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. A monetary order in the sum of \$650 for double the security deposit.
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord resides on April 4, 2018. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to the return of double the security deposit/pet deposit?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on January 15, 2014. The rent was originally set at \$650 per month payable in advance on the first day of each month. The tenancy agreement is not in writing although the tenant produced a letter from the landlord which was used to obtain social assistance confirming the above date and the amount of the rent.

There is a dispute between the parties as to the amount of the security deposit paid. The landlord testified the security deposit was \$200. The Tenant testified it was \$325.

The tenancy ended on July 15, 2017. The tenant(s) provided the landlord with his/her forwarding address in writing by mailing by mail on March 5, 2018.

The landlord filed an Application for Dispute Resolution in November 2017 seeking a monetary order against the tenant in the sum of \$4940. The matter was initially scheduled for January 2018. It was adjourned to March 22, 2018 and a decision was rendered on March 29, 2018. The arbitrator awarded \$33.60 plus \$100 for the cost of the filing fee for a total of \$133.60.

The decision states:

“I find that the landlords have established a total monetary claim of **\$133.60** comprised of the above described amount and the \$100.00 fee paid for this application.

In this case, both parties have provided a different version to the amount of security deposit paid by the tenants. Both versions are probable. Neither party provided any documentary evidence on this matter, such as receipts or cancelled cheques.

Therefore as the landlords have acknowledged that they have a security deposit of \$200.00, I order that the landlords retain the above amount from the tenants' security deposit in full satisfaction of the claim and I grant the tenants an order for the balance due under section 67 for the balance due of **\$66.40**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **landlords are cautioned** that costs of such enforcement are recoverable from the landlords.

Further, should the tenants have proof that they paid the landlords a security deposit of \$325.00, they are to provide that evidence to the landlords, and the landlords are to reimburse the difference to the tenants.”

There is a great deal of animosity between the parties.

Analysis:

The previous arbitration has given the tenants the right to apply for reimbursement of \$125 (should they prove a security deposit of \$325 was paid).

After considering all of the evidence presented at the hearing I determined the tenants paid a security deposit of \$325 at the start of the tenancy for the following reasons:

- I prefer the evidence of the Tenant to that of the Landlord and I am satisfied based on the evidence presented including the letter from the landlord that the rent was \$650 per month at the start of the tenancy and that a security deposit of ½ the rent or \$325 was paid by the Tenants to the Landlord. .
- Further in a situation such as this where the evidence is in dispute I determined the landlord has the burden of proof to establish what was agreed to. The landlord has an obligation under Section 13 of the Act to prepare a written tenancy agreement. That section provides as follows

“13 (1) A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.”

- The Act also requires the landlord to record the amount of the security and to give the tenant a copy of the written tenancy agreement within 21 days.
- The landlord failed to prepare a written tenancy agreement as required by the Act and as a result failed to establish that the tenant's paid a security deposit of \$200 only.

I do not accept the submission of the Tenant that I should be awarding double the security deposit. The tenant already has a monetary award for the return of \$66.40 from the previous arbitration. The previous arbitration ordered that the landlord may retain \$133.60 of the security deposit. Those orders are binding on the parties. The previous arbitration granted the tenants to reimburse of the difference between \$325 and \$200 or the sum of \$125. I determined there was no basis for the awarding of double the security given the previous arbitration awards.

However I determined the tenants are entitled to recover the balance of the security deposit in the sum of \$125.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant(s) the sum of \$125 plus the sum of \$100 in respect of the filing fee for a total of \$225.

The tenants retain the right to rely on the previous arbitration award of \$66.40.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this 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 final and binding on both parties.

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: September 21, 2018

Residential Tenancy Branch