



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FFT

Introduction

On July 30, 2018, the Tenant applied for Dispute Resolution under the Residential Tenancy Act seeking a monetary order for money owed or compensation for damage or loss under the Act, and for the return of the security deposit.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. All participants in the hearing provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, 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 double the security deposit?
- Is the Tenant entitled to other compensation under the Act or tenancy agreement?

Background and Evidence

The Parties testified that the tenancy began on July 1, 2017. Rent in the amount of \$2,500.00 was due by the last day of each month. The Tenant paid the Landlord a security deposit of \$1,200.00.

The parties testified that the Tenant move out of the rental unit and returned the keys to the Landlord on June 14, 2018.

The Tenant testified that they had the legal right to possess the rental unit until June 30, 2018. The Tenant testified that they moved out early and the Landlord approached them and offered them \$700.00 for the last two weeks of June 2018. The Landlord was re-renting the unit to a new tenant. The parties agreed that the Landlord could have possession of the rental unit in exchange for \$700.00.

In reply, the Landlord acknowledged the agreement to pay the \$700.00.

The Tenant testified that the Landlord was provided with the Tenant's forwarding address on June 14, 2018. The audio evidence from the Landlord supports that the Landlord received the Tenants forwarding address.

The Tenant testified that there was no written agreement that permitted the Landlord to withhold any amount of the security deposit. The Tenant testified that the Landlord did not return the security deposit to the Tenant within 15 days of the end of the tenancy.

The Tenant testified that the Landlord returned an amount of \$805.00 to the Tenant on July 9, 2018. The Tenant testified that the Landlord included a list of deductions; however, the Tenant never agreed to any deductions.

The Tenant is seeking the return of double the security deposit and the \$700.00 compensation. The Tenant has already received \$805.00.

In response, the Landlord testified that he did not have a written agreement that permitted him to withhold a certain amount of the deposit. The Landlord testified that the move out inspection report shows that there was damage. The Landlord acknowledged that he did not file an application for dispute resolution to make a claim against the deposit.

The Landlord believed that his tenancy agreement permitted him to make a unilateral decision to withhold the security deposit for cleaning costs, damage, or rent owing.

Analysis

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.

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off states

If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

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

I find that the Tenant provided their forwarding address to the Landlords on June 14, 2018. The Landlord did not apply for dispute resolution within 15 days of receiving the Tenant's forwarding address. I find that there was no written agreement from the Tenant that the Landlord could retain the security deposit or pet damage deposit.

I find that the term of the tenancy agreement that permits the Landlord to withhold the security deposit for cleaning costs, damage, or rent owing is inconsistent with section 38 of the Act and is not enforceable.

I find that the Landlord breached section 38 of the Act. Pursuant to section 38(6) of the Act, the Landlord must pay the Tenant \$2400.00 which is double the amount of the security deposit.

I find that the Landlord also owes the Tenant \$700.00 for the last two weeks of June 2018.

The Landlord owes the Tenant the amount of \$3,100.00. After setting off the amount of \$805.00 that the Tenant has already received, I find that the Landlord owes the Tenant the amount of \$2,295.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenant was successful with the claim, I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

I grant the Tenant a monetary order in the amount of \$2,395.00. 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 Tenants application for a monetary order to recover rent and for the return of the security deposit was successful.

I grant the Tenant a monetary order in the amount of \$2,395.00.

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: November 20, 2018

Residential Tenancy Branch