



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) for the return of the security deposit and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Tenant and both Landlords were present for the teleconference hearing. The Landlords confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence. The Tenant confirmed receipt of a copy of the Landlords’ evidence package. Neither party brought up any issues regarding service.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

Issues to be Decided

Is the Tenant entitled to the return of the security deposit?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy. The tenancy began in June 2016 and ended on August 31, 2018. Monthly rent was increased near the end of the tenancy to \$1,400.00 and was approximately \$1,345.00 prior to the rent increase. A security deposit of \$650.00 was paid at the outset of the tenancy.

The Tenant testified that one of the Landlords attended the rental unit on August 31, 2018, but that the Landlord would not conduct a move-out inspection report with her. The Tenant stated that the Landlord walked through the rental unit and advised the Tenant that professional cleaning would be needed. The Tenant stated that she was concerned that she was denied the right to a move-out inspection, so went back into the rental unit to take photos, which she submitted as evidence.

The Tenant stated that she provided her forwarding address in writing through a letter dated September 4, 2018, which she provided to the Landlords in person. The letter was included in the Tenant's evidence. She testified that she received a cheque for a partial return of the security deposit in the amount of \$350.20. Although the Tenant was unsure of the exact date this amount was received, she stated that it was within the required timeframe.

The Tenant submitted into evidence text message communication with the Landlord in which the Landlord advised her that there would be deductions from the security deposit for cleaning and the replacement of pillows and a mattress pad. This includes a text on September 2, 2018 in which the Landlord states deductions of \$299.80 and that \$350.20 will be returned. Through text message, the Landlord also sent the Tenant copies of the receipts for cleaning, the purchase of the pillows and the purchase of the mattress pad.

The Tenant has claimed for the return of the remainder of her security deposit in the amount of \$299.80. The Tenant confirmed that she did not agree to any deductions from her security deposit in writing.

The Landlord testified that the Tenant advised them that she would be moving out later in the day than originally planned. They referenced a text message in their evidence dated August 2, 2018 in which the Tenant notified the Landlord that her movers would be coming later than expected and the Landlord responded that this would be fine. The Landlord stated that as another tenant was moving out the same day and due to

personal circumstances, she was unable to print the inspection report and did not have time to complete the report.

The Landlord stated that although nothing was put into writing, the Tenant participated in a move-out inspection as they walked around the rental unit together. The Landlord stated that she told the Tenant that a cleaner would need to be hired and that the Tenant told her to go ahead. The Landlord confirmed that this was a verbal agreement and that nothing was agreed to in writing.

The Landlord stated that the rental unit was left dirty as were the pillows and mattress pad that were provided for use during the tenancy. The Landlord stated their belief that the Tenant should take responsibility for this as it occurred during the tenancy. The Landlord submitted photos of the rental unit including the pillows and mattress pad, the oven and the sink, as well as a copy of receipts for the costs incurred.

The Landlord confirmed receipt of the Tenant's forwarding address letter on September 4, 2018.

Analysis

I refer to Section 38(1) of the *Act* which states the following:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The parties agreed that the tenancy ended on August 31, 2018 and that the Tenant's forwarding address was provided on September 4, 2018. As such, I find that the Landlords had 15 days from September 4, 2018 to return the security deposit or file a claim against the deposit. However, a landlord may retain an amount from the deposit that the tenant agreed to in writing, pursuant to Section 38(4)(a) of the *Act*.

The parties both stated that there was no written agreement to retain a portion of the security deposit, and I have no evidence before me that the Landlords filed an Application for Dispute Resolution to retain the security deposit. Therefore, I find that the Landlords did not have the right under the *Act* to retain an amount from the security deposit and instead should have returned the deposit or filed an Application for Dispute Resolution.

As the Landlords did not comply with Section 38(1) of the *Act*, I find that Section 38(6) applies, and the Tenant is entitled to double the security deposit amount. Although the Tenant did not request double the security deposit, as stated in *Residential Tenancy Policy Guideline 17: Security Deposit and Set off*, consideration will be given to whether a tenant is entitled to double the deposit, unless the tenant has specifically waived the doubling provision.

As I have no evidence before me that the Tenant waived her right to double the security deposit, I find that the Tenant is entitled to the return of double, pursuant to Section 38(6) of the *Act*. The Tenant will be awarded this amount, less the amount that was already returned.

As the Tenant was successful in her application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00.

The Tenant is awarded a Monetary Order in the amount outlined below:

Return of security deposit	\$650.00
Amount to double security deposit	\$650.00
Recovery of filing fee	\$100.00
<i>Less amount already returned</i>	<i>(\$350.20)</i>
Total owing to Tenant	\$1,049.80

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenant a **Monetary Order** in the amount of **\$1,049.80**. The Tenant is provided with this Order in the above terms and the Landlords must be served with **this Order** as soon as possible. Should the Landlords fail to comply with this Order, this 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: February 25, 2019

Residential Tenancy Branch