



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This is an application by the tenant filed under the Residential Tenancy Act (the “Act”) for a monetary order for return of double the security deposit (the “Deposit”), and to recover the filing fee for the claim.

Both parties appeared, gave 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 at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the tenant entitled to a monetary order for return of double the Deposit?

Background and Evidence

The tenancy began on May 2018. Rent in the amount of \$900.00 was payable on the first of each month. A security deposit of \$450.00 was paid by the tenant.

The tenant testified that they vacated the premises on October 17, 2018. The tenant stated that they provided the landlord with a written notice of the forwarding address by text message and again by registered mail, which was signed for by the landlord on

November 5, 2019. A copy of the Canada post tracking history was filed in evidence. The tenant stated that they only authorized the landlord to deduct the amount of \$70.00 for utilities.

The tenant testified that the landlord only returned the amount of \$227.31. The tenant stated they did not agree that the landlord could take any further deductions.

The landlord acknowledged that they received the tenant's forwarding address. The landlord stated that the tenant agreed to the deductions of the unpaid utility. The landlord stated that the tenant paid the amount of \$101.00 toward the utilities, each month. The landlord stated that the bill for the utility is sent every two months and the tenant was either credited or there was a balance owing as the utility invoice changed based on usage. The landlord stated that the amount the tenant owed for unpaid utilities was the amount of \$230.80. Filed in evidence are invoice for utilities.

The tenant argued that they had the right to rely upon the landlord's action of accepting \$101.00 per month for the utility and they should not be responsible for anything above this amount. The tenant acknowledged that the tenancy agreement stated that they are responsible for the cost of the utility.

Analysis

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

Return of security deposit and pet damage deposit is defined in Part 2 of the Act.

Return of security deposit and pet damage deposit

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.

...

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

In this case, there was no evidence that the landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address, which was given on November 5, 2018.

I accept the testimony of the tenant that they agree that the landlord may retain the amount of \$70.00 from the security deposit; however, the landlord retained the amount of \$222.69.

I find the landlord has breached 38(1) of the Act. The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator or by the agreement of the tenant. Here the landlord did not have any authority under the Act to keep any amount over \$70.00.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Therefore, I must order, pursuant to section 38 of the Act, that the landlord pay the tenant the sum of **\$532.69**, comprised of double security deposit **\$760.00** on the amount held (\$380.00), less the amount of \$227.31, which has been returned to the tenant.

As I have heard the full issue of the utilities, I find it appropriate to deal with this issue to avoid a future hearing.

I find the tenant's position that they had the right to rely upon the landlord's action of accepting a \$101.00 per month as full payment of the utility unreasonable. The tenancy was a single unit and the tenant was responsible for the cost of the utility they used during their tenancy.

Simply by the tenant making monthly payments toward the utility does not release the tenant from their obligation under the tenancy agreement. I find the tenant failed to pay utilities in the amount of \$230.80. The landlord has received the amount of \$70.00, from the security deposit, leaving a balance due of \$160.80. I find the amount of \$160.80 will be deducted from the tenant's monetary claim.

The tenant is given a formal monetary order pursuant to 67 of the Act, in the amount of **\$371.89**. The landlord must be served with a copy of this order as soon as possible. Should the landlord 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.

Conclusion-

The tenant's application for return of double the Deposit is granted. The tenant is granted a monetary order in the above noted amount.

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: March 29, 2019

Residential Tenancy Branch