



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNSD, FF*

Introduction

This hearing dealt with an application by the tenant for a monetary order for the return of the security deposit. The tenant also applied for the recovery of the filing fee.

Service of the hearing document, by the tenant to the landlord, was done in accordance with section 88 of the *Residential Tenancy Act*, sent via registered mail on April 04, 2019. The tenant provided a tracking number.

Despite having been served the notice of hearing, the landlord did not attend the hearing. The tenant attended the hearing and was given full opportunity to present evidence and make submissions.

Issues to be Decided

Is the tenant entitled to the return of the security deposit and the filing fee?

Background and Evidence

The tenant testified that the tenancy began in May 01, 2018 and ended on November 30, 2018. The monthly rent was \$900.00 due on the first of each month. The tenant testified that he paid a security deposit of \$450.50.

The tenant stated that on October 23, 2018, prior to moving out he provided the landlord with a letter asking for the return of the deposit by electronic transfer and provided his email address. The tenant testified that a move out inspection was conducted on November 30, 2018 and during the inspection, the tenant agreed to allow the landlord to retain \$50.00 for a damaged fob. The tenant stated that there were no discrepancies identified during the inspection and the landlord let him know that he would receive the remainder of the deposit in a few days.

On December 15, 2018, the landlord contacted the tenant by email and explained that she would be retaining a major part of the deposit for various discrepancies that she had identified and that she would send the tenant the balance in the amount of \$67.50. The tenant agreed that he had received this amount even though he had not agreed to any deductions other than \$50.00 for the damaged fob.

On March 29, 2019 the tenant made this application for the return of his security deposit. The tenant is also claiming the recovery of the filing fee.

Analysis

Section 38(1) of the *Act* provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. If the landlord fails to repay the security deposit or make an application for dispute resolution within 15 days of the end of tenancy or 15 days after receiving the tenant's forwarding address, the landlord is liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the deposit.

Based on the sworn testimony of the tenant and in the absence of any contradictory evidence, I find that the landlord made a deduction off the deposit and returned only a portion of the deposit to the tenant. The landlord did not have the consent of the tenant to retain a portion of the deposit. In addition the landlord did not make application to retain a portion of the deposit.

Therefore, the landlord is liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security deposit.

The landlord currently holds a security deposit of \$400.00 after the agreed upon deduction of \$50.00 and is obligated under section 38 to return double this amount to the tenant. Accordingly the landlord must return \$800.00 to the tenant. The tenant testified that he has already received \$67.50 from the landlord. Therefore the landlord must return the balance owed in the amount of \$732.50

Since the tenant has proven his case, I grant the tenant the recovery of the filing fee of \$100.00.

Overall the tenant has established a claim of \$832.50. I grant the tenant an order under section 67 of the *Residential Tenancy Act*, for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order for **\$832.50**.

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: June 04, 2019

Residential Tenancy Branch