



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

On October 23, 2019, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for the Landlord to return of all or part of the pet damage deposit or security deposit, and to recover the filing fee for cost of the Application.

The matter was scheduled as a teleconference hearing. The Tenant and Landlords attended the hearing. The hearing process was explained, and the parties were asked if they had any questions. The Tenant and Landlords provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form 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 the security deposit?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

The Tenant and Landlords testified that the tenancy began on January 1, 2019 as a one-year fixed term tenancy. Rent in the amount of \$1,900.00 was due by the first day of each month. The rent was reduced to \$1,585.00 each month. The parties agreed to

a rent reduction of \$315.00 to reimburse the Tenant for materials. The Tenant paid the Landlord a security deposit of \$950.00. The tenancy ended on October 2, 2019.

The Tenant testified that the Landlords did not return the security deposit to him after the tenancy ended.

The Tenant is seeking compensation of \$1,900.00 which is double the amount of the security deposit.

The Tenant testified that his forwarding address was provided to the Landlord in writing on October 3, 2019 and was confirmed in person with the Landlord on October 4, 2019.

The Tenant testified that the Landlord has not returned any amount of the security deposit. The Tenant testified that there was no written agreement authorizing the Landlords to retain any amount of the security deposit.

In reply, the Landlord testified that on September 29, 2019, she sent the Tenant the amount of \$915.00 via e-transfer. The Landlord testified that the Tenant accepted the funds. The Landlord testified that she held back an amount due to the Tenants responsibility to pay a water bill. The Landlord testified that the funds were returned to the Tenant prior to the end of the tenancy.

The Tenant confirmed that the Landlord returned \$915.00 on September 29, 2019; however, he testified that the \$915.00 payment was a return of the security deposit. The Tenant testified that the money the Landlord returned was for other money the Landlord owed him for the cost of materials for the work the Tenant performed on the rental unit.

The Tenant provided a copy of a text message dated September 4, 2019 sent to the Landlord where the Tenant offers to move out early on the condition that his costs of \$945.00 will be covered.

The Tenant provided a copy of a text message he received from the Landlord which provides "yes, I'll pay the \$945 if you are moving out early".

The Tenant provided a copy of a text message exchange with the Landlord on September 29, 2019 where he informs the Landlord that he will be moving out early and

requesting the Landlord return \$915.00. The Landlord responds “yes, I’ll send it this evening”.

The Tenant provided a copy of a text message exchange with the Landlord on October 2, 2019 where the Tenant writes “the place is all yours, can you fire me back my deposit tonight? The Landlord responds “thank you ...I will have to do an inspection”

The Tenant testified that he has further proof that the amount the Landlord returned to him was not the security deposit. The Tenant referred to an audio recording of a meeting he had with the male Landlord on October 2, 2019. The audio recording provides the Landlord stating, ‘I cannot give you your damage deposit today, you know that right”.

The Tenant provided a copy of a text message exchange with the Landlord on October 3, 2019 where the Tenant provides his forwarding address.

The Landlord submitted a document which indicates that the Tenant claims that the Landlord owes him \$945.00 for renovations. The Landlord submits that the amount of the damage deposit and renovation costs are very similar. The Landlord submits that they chose to pay the time sensitive damage deposit immediately upon receiving notice that the Tenant would be vacating the home. The Landlords submits that they went to the rental unit on October 2, 2019 and discovered damage throughout. The Landlord submits that they made the decision to hold back the funds for the un authorized renovation project until someone could investigate the fireplace removal.

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.

Section 38 (6) of the Act provides that if a landlord does not comply with subsection (1), the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

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

I find that the Tenant provided his forwarding address to the Landlords on October 3, 2019. I find that there was no written agreement from the Tenant that the Landlords could retain any amount of the security deposit.

I do not accept the Landlords explanation that the \$915.00 that was sent to the Tenant on September 29, 2019 was the return of the security deposit. I find that the parties entered into an agreement that the Tenant would perform work on the rental unit in exchange for a reduction in rent to cover the Tenant's costs. I find that the Landlord returned the amount of \$915.00 on the same day that the Tenant requested to be reimbursed for his costs, and the Landlord agreed to pay the costs if the Tenant moved out early. I also find that the Landlord responded on October 2, 2019 to the Tenants request for the return of the security deposit by stating "I will have to do an inspection". I find that the Landlords response is inconsistent with her position that the security deposit was already returned to the Tenant. In addition, I am mindful that the October 2, 2019 audio recording provides that that the Landlord said, "I cannot give you your damage deposit today, you know that right".

I find that the payment made to the Tenant on September 29, 2019 was not a return of the security deposit. I find that it is more likely that the Landlords decided to hold back the security deposit when they entered the rental unit on October 2, 2019 and had concerns about the fireplace removal.

I find that the Landlords did not apply for dispute resolution to make a claim against the security deposit within 15 days of receiving the Tenant's forwarding address.

I find that the Landlord's breached section 38 of the Act. Pursuant to section 38(6) of the Act, the Landlords must pay the Tenant double the amount of the security deposit.

I order the Landlords to pay the Tenant the amount of \$1,900.00 which is double the amount of the security deposit.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenant's paid to make application for dispute resolution.

I grant the Tenant a monetary order in the amount of \$2,000.00. This monetary 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 Landlord.

Conclusion

The Landlords failed to return the security deposit to the Tenant in accordance with the legislation.

The Tenant is granted double the amount of the security deposit and the recovery of the filing fee. I grant the Tenant a monetary order in the amount of \$2,000.00.

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: December 31, 2019

Residential Tenancy Branch