



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(s) filed under the Residential Tenancy Act (the “Act”) for a monetary order for return of double the security deposit (the “Deposit”), and 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.

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 September 1, 2018. Rent in the amount of \$850.00 was payable on the first of each month. A security deposit of \$425.00 was paid by the tenant. The tenancy ended on March 31, 2019.

The tenant stated that they provided the landlord with a written notice of the forwarding address on April 20, 2019. The tenant stated that the landlord returned the amount of \$285.00; however, they did not authorize the landlord to retain the amount of \$140.00.

The landlord stated that they received the tenant's forwarding address and returned the amount of \$285.00 to the tenant. The landlord stated that they retain the amount of \$140.00 as they had to have the unit cleaned as the tenant was not feeling well at the end of the tenancy and did not completed the deficiencies.

The landlord stated that if the security deposit is required to be double, then it should only double the amount that was held.

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.

...

(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, the landlord was sent the tenant's forwarding address by registered mail on April 20, 2019. The landlord acknowledged that it was received in May 2019.

The landlord returned the amount of \$285.00. The tenant did not authorize the landlord to retain the amount of \$140.00. The landlord did not make an application claiming against the security deposit.

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. Here the landlord did not have any authority under the Act to keep any portion of the Deposit. Therefore, I find that the landlord was not entitled to retain any portion of the Deposit.

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.

In this case, the landlord argued the tenant is only entitled to double the amount held. I have reviewed and considered the Residential Tenancy Policy Guideline #17 Security Deposit offset. The policy guideline does not support the landlord's calculation.

Therefore, I must order, pursuant to section 38 of the Act, that the landlord pay the tenant the sum of \$950.00 comprised of double the amount of the security deposit(\$425.00) and to recover the \$100.00 fee for filing this Application. However, that amount will be reduced by the \$285.00 which was returned. ($\$950 - \$285 = \$665.00$.)

The tenant is given a formal monetary order pursuant to 67 of the Act, in the amount of **\$665.00** and 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 held, 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: January 22, 2020

Residential Tenancy Branch