



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agreed that the tenant emailed the landlords a copy of the tenant's application for dispute resolution on May 5, 2020 and it was received by the landlords on the same day. I find that the tenant's application for dispute resolution was served on the landlords in accordance with the March 30, 2020 Director's Order.

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlords, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on August 1, 2019 and ended on April 1, 2020. Monthly rent in the amount of \$1,150.00 was payable on the first day of each month. A security deposit of \$575.00 was paid by the tenant to the landlords. A written tenancy agreement was submitted for this application.

Both parties testified that the tenant provided the landlords with her forwarding address in writing on March 28, 2020. The landlords testified that they received it two days later.

Both parties agreed that the landlords returned \$145.00 of the tenant's security deposit on April 17, 2020. Both parties agreed that the tenant did not provide the landlords with written permission to retain a specific dollar amount from the tenant's security deposit. The landlord testified that the tenant's security deposit was returned more than 15 days after the end of this tenancy due to COVID 19.

The landlords testified that they retained \$150.00 from the tenant's security deposit because that's what it would have cost them to hire a cleaner to clean the kitchen appliances the tenant left dirty. The landlords testified that the tenant broke the fixed term lease and it took her seven hours to advertise and secure a new tenant. The landlords deducted \$280.00 from the tenant's security deposit for the seven hours of work it took to secure a new tenant.

The landlords testified that they informed the tenant via text that she would be responsible for costs associated with re-renting the property, but no dollar amount was discussed because the parties did not know how long it would take to find a new tenant. The text messages entered into evidence show that the tenant agreed to be responsible for advertising costs but did not agree to specific deductions.

The landlords did not file an application for dispute resolution seeking authority to retain any portion of the tenant's security deposit.

Analysis

Section 38 of the Act requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the Act, equivalent to double the value of the security deposit.

However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I find that the landlords returned \$145.00 of the tenant's security deposit more than 15 days after the end of the tenancy. The landlords' responsibility under the *Act* to return the tenant's security deposit within 15 days from the end of this tenancy was not changed by any emergency legislation or Director's Orders enacted in response to COVID 19.

Based on the evidence of both parties, I find that the tenant did not authorize the landlords in writing to deduct a specific amount from the tenant's security deposit. While the tenant agreed in principle to be responsible for costs associated with re-renting the unit, this does not constitute consent to the deduction of a specific amount from the security deposit.

As I have found that the landlords did not return the tenant's security deposit within 15 days from the end of this tenancy, did not have written authorization to deduct a specific amount from the tenant's security deposit and did not file an application with the Residential Tenancy Branch for authority to retain the deposit, the tenant is entitled to receive double the security deposit as per the below calculation:

$$\begin{aligned} &\$575.00 \text{ (security deposit)} * 2 \text{ (doubling provision)} = \$1,150.00 - \$145.00 \\ &\text{(amount already returned)} = \mathbf{\$1,005.00.} \end{aligned}$$

As the tenant was successful in this application for dispute resolution, I find that the tenant is entitled to recover the \$100.00 filing fee, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the tenant in the amount of \$1,105.00.

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: September 01, 2020

Residential Tenancy Branch