



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

The tenant applies to recovery the \$1155.00 remainder of a security deposit and the deposit doubling penalty imposed by s. 38 of the *Residential Tenancy Act* (the “RTA”).

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Is the tenant entitled to the return of the remainder of her deposit? Is she entitled to the benefit of the doubling penalty?

Background and Evidence

The rental unit is a two-bedroom, condominium apartment owned by the landlord. The tenancy started in May 2019. The monthly rent was \$3150.00, due on the first of each month and the tenant paid a \$1575.00 security deposit at the start of the tenancy.

The tenancy ended August 31, 2020. The tenant moved out that day. It is agreed the tenant provided the landlord with her forwarding address in writing a few days later.

The landlord did not have the tenant's written authorization to retain any portion of the deposit. On or about September 18, 2020 the landlord returned \$420.00 of the deposit money to the tenant, claiming she had retained the balance to cover cleaning and repair costs.

For this hearing the landlord has filed documentary evidence in an effort to show that the tenant did not leave the rental unit reasonably clean and free of damage but for reasonable wear and tear (as required by s. 37 of the *RTA*).

The landlord also filed material to indicate various strata fines have been imposed on her as a result of the tenant's conduct. She has made an application to the Civil Resolution Tribunal regarding the strata fines. No decision has yet been rendered.

The tenant contests all the landlord's claims

Analysis

Return of Deposit

As stated at hearing, for an arbitrator to be empowered to consider and determine the landlord's claims the landlord must bring her own application for dispute resolution with the Residential Tenancy Branch. She has not done so. She may do so immediately following this hearing or at any time within two years following the end of the tenancy.

On the evidence before me, the landlord does not presently have a lawful ground for retaining the \$1155.00 balance of the tenant's security deposit and the tenant is entitled to its return.

Double Deposit

Section 38 of the *RTA* provides that once a tenancy has ended and once the tenant has provided the landlord with a forwarding address in writing, the landlord then has 15 days to either repay the deposit money or to make an application to keep all or a portion of it. If a landlord fails to either repay the money or make an application within that 15 days, the landlord must account to the tenant for double the deposit.

On the evidence before me the landlord has run afoul of this penalty provision. The tenant is entitled an award of \$3150.00 (double the deposit), less \$420.00 of the deposit returned last September, leaving a total of \$2730.00

Conclusion

The tenant is entitled to an award of \$2730.00 plus recovery of the \$100.00 filing fee for this application. She will have a monetary award against the landlord for the total amount of \$2830.00.

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: January 21, 2021

Residential Tenancy Branch