



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC T, MNSD, FFT

Introduction

The tenant applies to recover deposit money held back by the landlord after the end of the tenancy and for the deposit doubling penalty provided for in 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

Does the landlord have the tenant’s written authorization to withhold any portion of the \$1525.00 total deposit money or is there some other basis upon which the landlord could retain it?

Background and Evidence

The pertinent facts are not in dispute. The rental unit is the two-bedroom upper unit in a home containing a total of four suites. The tenancy started in December 2017 and ended in March 2020. The monthly rent was \$1625.00. At the start of the tenancy the tenant paid a \$762.50 security deposit and a \$762.50 pet damage deposit.

The tenant MR paid the March 2020 rent in full but vacated the rental unit and returned the keys to the landlord on March 26.

The parties conducted a move-out condition inspection together and a report was prepared using the standard form. It was silent on the BB’s retention of any portion of

the deposit money. The parties fell into disagreement about the state of the premises left by MR and the cost to put things right. It appears that the work of the tenant's cleaners may not have met the standards deemed sufficient by the landlord and that some rent was owed.

On April 15 the tenant MR texted the landlord BB stating: "Please deduct what you feel is necessary and issue me my deposit refund as per your responsibilities as a landlord."

Then, on the same day, the landlord emailed the tenant with a statement of account "showing all monies paid, due & other balances outstanding" requesting the tenant review it as he wanted to close the matter by the end of the day.

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The landlord BB testifies that he did not hear back from the tenant and so, later that day he sent the tenant an e-transfer of \$306.97, the balance due under his accounting.

BB included a message in the e-transfer that read: "By completing this deposit you accept the amount as full and final net balance payment for the return of residential tenancy deposit funds."

The tenant MR did not respond immediately. On May 4 she completed the deposit of money to her account and emailed the landlord stating:

Please be advised that I disagree with your deductions made on the statement of account you have supplied me. I have accepted the partial payment of \$306.97 but have filed for a full refund of my security deposit with the residential dispute resolution services.

The tenant MR then made an application for dispute resolution but it did not proceed to a hearing. She renewed her claim by making this application in November 2020.

MR argues that though she reviewed the statement of account and the e-transfer message, and though she deposited the transfer, she disagreed with the statement and was unaware of the *RTA* s. 38 deposit doubling penalty.

Analysis

Had the landlord merely sent the e-transfer of deposit money without any conditions then perhaps the tenant could reasonably complete the transfer, deposit the money and

pursue the landlord for recovery of the remainder of the deposit money and the *RTA* s. 38 doubling penalty if applicable.

However, the e-transfer sent by the landlord was a conditional offer. The condition was that if accepted it would be as a final resolution of the money matters between the two. Acceptance of that conditional offer would be by the tenant completing the e-transfer. The offer was made after the tenant had directed the landlord to deduct what he considered reasonable from the deposit money and send the balance to her.

The tenant completed the transfer and must be taken to have accepted the conditional offer by that act. She could not complete the e-transfer on any other basis without the landlord's agreement. In the circumstances of this case, she could have counter offered while the e-transfer was still pending or she could have declined to accept the transfer on the condition set by the landlord, but she did not.

The tenant is barred or estopped from advancing a claim contrary to the condition put forth in the offer she accepted by completing the e-transfer.

Conclusion

The tenant's application must be dismissed.

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: February 10, 2021

Residential Tenancy Branch