



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDT

Introduction

This is an application by the tenant filed under the Residential Tenancy Act (the “Act”) for a monetary order for return of double the security deposit (the “Deposit”), and for other money owed for over payment of rent.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing. Both parties confirmed under affirmation that they were not making a prohibited recording of the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

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.

Preliminary and Procedural Issue

At the outset of the hearing the tenant’s advocate stated that the tenant is not proceeding with their claim for overpayment of rent, as they had originally believed that the landlord had received an extra rent payment each year. However, that was not the case.

As no extra rent payment was paid by the tenant, I find it appropriate to dismiss this portion of the tenant’s claim without leave to reapply.

Issue to be Decided

Is the tenant entitled to a monetary order for return of double the Deposit?

Background and Evidence

The tenancy began on May 1, 2015. Current rent in the amount of \$777.00 was payable on the first of each month. A security deposit of \$342.50 was paid by the tenant. The tenancy ended on August 31, 2020.

The tenant's advocate stated that they provided the landlord with a written notice of the forwarding address on August 22, 2020. The advocate stated that the tenant did not authorize the landlord to retain any amount from the Deposit.

The landlord's agent testified that in the email of August 22, 2020, the tenant agreed to the deduction of \$100.00 for carpet cleaning and also states to return the balance of the security deposit. The agent stated this was clearly an agreement to retain the amount of \$100.00 for carpet cleaning.

The landlord's agent testified that the addendum to the tenancy agreement - use of premises clause 11, and notice to terminate clause 3 states if the carpets, window covering and premises are not cleaned that these would be deducted from the security deposit. The agent stated after these amounts were deducted there was no balance due of the Deposit.

The tenant's advocate argued that the clauses in the addendum to the tenancy agreement conflicts with the written tenancy agreement, as it states the landlord can only keep an amount agreed upon for damages.

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.

...

(4) A landlord may retain **an amount** from a security deposit or a pet damage deposit if,

- (a) **at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant,** or
- (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(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, I am satisfied by the email of August 22, 2020 that the tenant agreed to the amount of \$100.00 for carpet cleaning to be deducted from the security deposit. The email supports that the tenant was expecting to receive the balance remaining of the Deposit to be repaid.

I accept the addendum to the tenancy agreements says the landlord will deduct from the security deposit cost of cleaning, carpet and window covering cleaning from the security deposit, if not completed at the end of the tenancy. However, the landlord

cannot automatically make deductions from the Deposit, without the written consent of the tenant to the amount agreed upon at the end of the tenancy. If no amount is agreed upon, then the landlord must comply with section 38 of the Act, by making an application for dispute resolution claiming against the security deposit within 15 days.

In this case, the landlord did not apply for arbitration and did not have the written consent of the tenant to withhold any amount over the agreed upon amount of \$100.00.

I find the landlord has breached section 38(1) of the Act.

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 or to an amount agreed upon by the tenant at the end of the tenancy. Here the landlord did not have any authority under the Act to keep any portion of the Deposit, except for the \$100.00. Therefore, I find that the landlord was not entitled to retain the amount of \$242.50.

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.

Therefore, I must order, pursuant to section 38 of the Act, that the landlord pay the tenant the sum of \$685.00 , comprised of double the Deposit of \$342.50. The amount of \$685.00 will be reduced by the \$100.00 agreed upon by the tenant for carpet cleaning. Therefore, I find the tenant is entitled to recover the total amount of **\$585.00**.

The tenant is given a formal monetary order pursuant to 67 of the Act, in the above terms 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 is granted.

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: July 19, 2021

Residential Tenancy Branch