



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Avanira Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

This is an application filed by the Tenant for a monetary order for the return of the security deposit, money owed and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. The Landlord stated at the beginning of the hearing that his late evidence package was hand delivered to the Residential Tenancy Branch Office, but did not provide any copies to the Tenant. The Tenant confirmed not receiving any of the Landlord's late evidence. Upon reviewing the documentary evidence, I determined that the material could not be referred to for this hearing as it could be considered unfair. As well, I deemed that the documents were not relevant to the Tenant's Application. Both parties were advised that the Landlord could make verbal references to evidence if they thought necessary. The hearing proceeded.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order for the return of the security deposit?

Background and Evidence

Both parties confirmed in their direct testimony that a \$700.00 security deposit was paid by the Tenant to the Landlord and that a \$200.00 utility deposit was also taken after agreeing upon it in the tenancy agreement. Both parties also agreed in their direct testimony that the tenancy ended on September 27, 2013 when the Tenant returned the keys to the rental unit to the Landlord and completed a condition inspection report for the move-out. Both parties also agreed that the Tenant provided her forwarding address in writing via email on September 29, 2013 and then again in a written letter on December 2, 2013 as shown by the Tenant's submitted copy of the email dated September 29, 2013. Both parties also agreed that the Landlord still holds the \$700.00

security deposit and the \$200.00 utility deposit over disputes of claims made by the Landlord and that at no time did the Tenant give permission for the Landlord to retain both deposits and that the Landlord failed to apply for dispute resolution to dispute the return of the deposits.

Analysis

Section 38 of the Residential Tenancy Act states

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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(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.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(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.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) *[service of documents]* or give the deposit personally to the tenant.

I find based upon the undisputed evidence of both parties that the Tenant has established a monetary claim. The Landlord has not complied with the Act by returning the deposit within 15 days of receiving the tenant's forwarding address in writing (once by email on September 29, 2013 and second in a letter December 2, 2013) or when the tenancy ended on September 27, 2013. The Landlord did not file an application for dispute resolution to dispute returning the deposits. The Landlord is also liable as per Section 38 (6)(b) and must pay the Tenant an amount double the security deposit of \$700.00. The Tenant has established a monetary claim of \$1,400.00 for the return of the security deposit. I also order that the Landlord return the \$200.00 utility deposit. The Tenant is also entitled to recovery of the \$50.00 filing fee. I grant the Tenant a monetary order under section 67 of the Residential Tenancy Act for \$1,650.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Tenant is granted a monetary order for \$1,650.00.

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: March 20, 2014

Residential Tenancy Branch

