



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL PROVIDENCE MANAGEMENT INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, RPP, FFT

Introduction

On March 21, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for the Landlord to return of all or part of the pet damage deposit or security deposit; for the return of personal property; and to recover the filing fee for the Application.

The matter was set for a conference call hearing. Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant testified that she did not disclose a document containing phone call records to the Landlord prior to the hearing. The Residential Tenancy Branch Rules of Procedure require that an applicant provide a copy of all their evidence to a respondent at least 14 days prior to a hearing.

Since the applicant failed to provide the document to the respondent prior to the hearing, and the respondent has no knowledge of its contents, the document will not be considered in this hearing.

Issues to be Decided

- Is the Tenant entitled to the return of double the security deposit?
- Is the Landlord holding the Tenant's personal property?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy commenced on November 29, 2017, and ended on January 31, 2018. Rent in the amount of \$950.00 was due by the first day of each month. The Tenant paid the Landlord a security deposit of \$475.00.

The Tenant testified that the Landlord did not return the security deposit within 15 days after the Tenant moving out and providing her forwarding address.

The Tenant testified that there was an agreement reached at the end of the tenancy that the Landlord could retain \$150.00 from the security deposit for carpet cleaning.

The Tenant testified that she provided the Landlord with her forwarding address in writing on February 2, 2018. The Tenant provided a copy of the letter.

The Tenant testified that when she did not receive the security deposit of \$325.00 she called the Landlord's office to inquire about the return of the deposit. She testified that she was informed by someone that the deposit had not been sent.

The Tenant applied for dispute resolution the following day on March 21, 2018.

The Tenant testified that she has subsequently received the deposit and cashed a cheque in the amount of \$325.00; however, she wants the amount of the deposit to double because the Landlord failed to return it within 15 days.

In response, the Landlord testified that they received the Tenant's forwarding address on February 8, 2018. The Landlord testified that the Tenant called the office on March 20, 2018, and was informed that a cheque in the amount of \$325.00 was sent to her on February 14, 2018.

The Landlord testified that after receiving the Tenant's phone call that she had not received the cheque for the deposit, the Landlord immediately issued a new cheque and put a stop payment on the old cheque.

The Landlord provided a copy of a letter dated March 21, 2018, sent to the Tenant where the Landlord states they have sent the Tenant a new cheque and put a stop payment on the old cheque.

The Landlord provided a copy of a cheque dated February 14, 2018, in the amount of \$325.00. The Landlord provided a copy of a bank document that indicates the Landlord submitted a stop payment request for the cheque dated February 14, 2018, at a cost of \$12.50. The Landlord provided a copy of an envelope that has the Tenant's forwarding address on it.

Personal Property

The Tenant clarified that the Landlord is not holding personal property. The Tenant submitted that she has concerns regarding the move out inspection that was to be conducted with the Landlord at the end of the tenancy.

The Tenant testified that a move out inspection did not proceed on January 31, 2018 at 10:30 am because the Tenant's movers had not arrived to remove the Tenant's belongings. The Tenant testified that at 1:00 pm when the movers were finished, the Landlord did not conduct a move out inspection with her. The Tenant testified that she left the rental property without participating in a move out inspection.

The Landlord testified that the move out inspection was scheduled for 10:30 am and the Tenant was not ready, so it was rescheduled for later that day at 2:30 pm. He testified that he was not available at 1:00 pm. The Landlord testified that he attended the rental unit at 2:30 pm to conduct the move out inspection and the Tenant failed to attend.

Analysis

Section 38 (1) of the Act states that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must repay any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off states

If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

I find that the Landlord received the Tenant's forwarding address in writing on February 8, 2018. I find that the Landlord was authorized by the Tenant to withhold \$150.00 from the security deposit for carpet cleaning.

I find that the Landlord issued a cheque in the amount of \$325.00 to the Tenant on February 14, 2018. The Landlord returned the security deposit to the Tenant within 15 days after receiving the Tenant's forwarding address in writing.

I find that when the Landlord became aware that the Tenant had not received the February 14, 2018, cheque, the Landlord took immediate action and issued another cheque to the Tenant.

I find that there is insufficient evidence from the Tenant to prove the Landlord was being untruthful as suggested by the Tenant. I find that the Landlord did not breach section 38 of the Act. The Tenant is not entitled to double the amount of the security deposit.

The Tenant's request for the return of personal property appears to have been made in error, and is dismissed due to insufficient evidence from the Tenant that the Landlord has seized her property.

Both parties provided testimony regarding circumstances surrounding a move out inspection at the end of the tenancy. Since the Landlord has already returned the security deposit to the Tenant, I make no finding regarding this issue.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since I find that the Landlord did not breach the Act, I decline to make an order that the Landlord repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

Conclusion

The Landlord returned the security deposit to the Tenant in accordance with the legislation.

The Tenant's request for double the amount of the security deposit is dismissed. The Landlord returned \$325.00 to the Tenant prior to the hearing.

The Tenant's request for the return of personal property is 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: June 05, 2018

Residential Tenancy Branch