



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a Monetary Order for the return of double the security deposit.

The tenant served the landlord by Registered mail on October 22, 2009 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, were provided the opportunity to present their evidence orally, in written form, documentary form and make submissions to me. On the basis of the evidence presented at the hearing I have determined:

Issues(s) to be Decided

Is the tenant entitled to the return of double the security deposit?

Background and Evidence

Both Parties agree that this month to month tenancy started on January 01, 2009 and ended on August 31, 2009. A tenancy agreement was in place and signed by both Parties on December 01, 2008. The tenant paid a monthly rent of \$2,800.00 which was due on the first of each month in advance. The tenant paid a security deposit of \$2,800.00. Of this \$1,700.00 was paid on December 01, 2008 and \$1,100.00 was paid on December 02, 2008.

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The tenant states that she did not have the landlords address when she first moved from the rental unit, she confirmed with the landlords' brother the landlords address and on February 01, 2010 the tenant provided the landlord with her forwarding address in writing. This was accepted by a person at the landlords address and the tenant has provided sworn affidavits and photographs showing the forwarding address being given to the person at the landlords address. The tenant claims the landlord did not return the security deposit to her within 15 days of receiving her forwarding address in writing.

The landlord states that at the end of the tenancy the tenant left damages in the rental unit and she kept the security deposit to offset the money she felt was owed to her by the tenant to rectify these damages. The landlord states that she was not aware that she only had 15 days after receiving the tenants forwarding address to return the security deposit or make a claim to keep it.

Analysis

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to s. 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

I find that the landlord did receive the tenants forwarding address in writing on February 01, 2010. As a result, the landlord had until February 16, 2010 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the tenant filed her application to recover double the security deposit on October 22, 2009 and acted prematurely at that time in filing her application before she had given the landlord her forwarding address in writing. However, I find the landlord did not return the tenants security deposit or make a claim to keep it after she did receive the tenants forwarding address before the date of this hearing.



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Consequently, pursuant to s. 38(6)(b) of the *Act*, the landlord must pay the tenant double the amount of her security deposit of \$2,800.00 and accrued interest of \$3.51 on the original amount to a total sum of **\$5,603.51**.

Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$5,603.51**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

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 19, 2010.

Dispute Resolution Officer