



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the tenant for an order for the return of her key deposit and double her security deposit. Both parties participated in the hearing.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The following facts are not in dispute. The tenancy ended on May 31, 2010 and a \$440.00 security deposit was paid on December 17, 2007. The tenant paid a \$50.00 key deposit at the outset of the tenancy. The tenant provided her forwarding address to the landlord in writing on June 4, 2010. Within 15 days of having received the forwarding address, the landlord returned to the tenant \$309.85 which represented the \$440.00 security deposit, \$6.87 in interest and the \$50.00 key deposit less deductions of \$187.02.

The issue in dispute was whether the landlord had provided opportunity for a condition inspection of the rental unit and whether the tenant had participated. The landlord testified that the tenant was given a letter on May 21 advising that the condition inspection of the unit would take place on May 31 at 1:00 p.m. The landlord testified that the tenant was reminded at least twice of the inspection. The inspection did not occur on May 31st and the parties agreed that it would take place on June 1 at 1:00 p.m.

The landlord testified that she was at the rental unit at 1:00 on June 1 and that the tenant did not attend, so she completed the condition inspection report and left the tenant's copy on the counter as the tenant still had the keys to the unit. The landlord claimed that the tenant later came to the building and the landlord asked her to inspect the unit but the tenant declined.

The tenant denied having been given a letter on May 21 advising that the time for the inspection was May 31 at 1:00. The tenant provided a copy of the letter in which the date and time of the inspection were blank and testified that this was the copy she had been given. The tenant testified that she missed her bus connection on June 1 and arrived at the unit at 1:30 at which time she and the landlord conducted a visual inspection, with no written report having been completed.

The landlord vehemently denied having inspected the unit with the tenant.

Analysis

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. A landlord who does not return the full deposit within 15 days is liable under section 38(6) which provides that the landlord must pay the tenant double the amount of the security deposit.

In this case, I find that the tenancy ended on May 31, 2010 and the landlord received the forwarding address in writing on June 4 and therefore was obligated to return the full deposit no later than June 19 or apply to retain it. I find that the landlord wrongfully withheld \$187.02 of the security deposit and interest.

The question which then must be answered is whether the tenant extinguished her right to claim the security deposit. Section 36(1) provides that the landlord must provide the tenant with 2 opportunities to schedule a time to inspect the rental unit and that if the tenant fails to participate on either occasion, the tenant has extinguished her right to claim against the deposit. I find that the tenant did not receive the proposed time the

landlord alleges to have given on May 21. The tenant's copy was blank and I find that the landlord failed to fill in the proposed time on the tenant's copy of the letter. I find that the time proposed for June 1 was the first opportunity provided to the tenant. I find it unlikely that the parties conducted a condition inspection of the unit on June 1 as suggested by the tenant. The tenant made no reference to such an inspection in her detailed written submission and I accept that the landlord would have used the condition inspection report had such an inspection occurred. However, I find that a second opportunity for inspection was not provided to the tenant and therefore the tenant cannot have extinguished her right to claim against the deposit.

The landlord currently holds a security deposit of \$187.02 and I find that the tenant is entitled to recover double that part which the landlord wrongfully withheld. I find that the tenant is also entitled to recover the \$50.00 filing fee paid to bring her application.

Conclusion

I award the tenant \$424.04 which represents \$374.04 as double the security deposit and \$50.00 for the filing fee. I grant the tenant a monetary order which may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

I note that this award is made with the presumption that the cheque for \$309.85 sent to the tenant in June is still negotiable. In the event that the cheque cannot be negotiated, the tenant is free to apply for a review of this decision.

Dated: November 05, 2010

Dispute Resolution Officer