



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, FF

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 and to recover the filing fee.

The tenant served the landlord by registered mail on September 20, 2010 with a copy of the Application and Notice of Hearing. I find that the landlords were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

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

Issues(s) to be Decided

- Is the tenant entitled to receive double the security deposit?

Background and Evidence

Both parties agree that this tenancy started on March 01, 2009 however the tenant did not move into the unit until March 15, 2009. This was a fixed term tenancy for one year which reverted to a month to month tenancy at the end of the fixed term. Rent for this unit was \$1,000.00 per month and was due on the first of each month. The tenant paid a security deposit of \$500.00 on February 22, 2009. The tenant moved from the rental unit on April 30, 2010.

The tenant testifies that she gave the landlord's her forwarding address in writing on August 18, 2010 by registered mail and has provided a copy of the letter and the registered mail receipt and

tracking information. In this letter the tenant also requested the landlords to return her security deposit. The tenant states she did receive a cheque from the landlords on September 20, 2010 for \$250.00 with a letter concerning the deductions made from her security deposit. The tenant testifies that she did not authorise the landlords to make these deductions and disputes the landlords claim as to why they made the deductions.

The tenant seeks to recover double her security deposit as it was not returned to her within 15 days of the landlords receiving her forwarding address. The tenant also seeks to recover her filing fee of \$50.00 paid for this application.

The landlords testify that \$250.00 was withheld from the security deposit as the tenant did not give proper notice to end the tenancy, had left some damage at the unit and had not cleaned the unit. The landlords agree that they sent the tenant a cheque for \$250.00 from her security deposit on September 20, 2010.

The landlords state they thought they had filed an application to keep the security deposit and have provided a copy of the application form sent to the tenant.

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 section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that the landlord did receive the tenants forwarding address in writing on August 23, 2010, the fifth day after it was mailed pursuant to section 90 (a) of the *Act*. As a result, the landlord had until September 07, 2010 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return the security deposit and although they have provided a copy of an

application form there is no record that this application was filed, no file number was issued and no filing fee was paid by the landlords. Therefore, I find that the tenant has established a claim for the return of double the security deposit of **\$1,000.00** pursuant to section 38(6)(b) of the *Act*.

As the tenant did receive \$250.00 from the landlords after the 15 allowable days, this sum will be deducted from the total amount due.

I also find the tenant is entitled to recover the **\$50.00** filing fee from the landlords pursuant to section 72(1) of the *Act*. I find the tenant is entitled to a Monetary Order as follows:

Double the security deposit	\$1,000.00
Filing fee	\$50.00
Total amount due to the tenants	\$800.00

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 **\$800.00**. The order must be served on the respondents 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: January 21, 2011.

Residential Tenancy Branch