



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 the tenant's application for return of the security deposit and return of \$100.00 paid for an additional occupant in July 2010. The tenant provided a registered mail tracking number as evidence the landlord was served with notification of this hearing. The landlord did not appear at the hearing; however, the landlord had made a submission in writing to the Residential Tenancy Branch in response to the tenant's application. I was satisfied the landlord was served and I proceeded to hear from the tenant without the landlord present. I also described the landlord's submissions to the tenant and provided the tenant the opportunity to respond.

Issue(s) to be Decided

1. Is the tenant entitled to return of single or double the security deposit?
2. Is the tenant entitled to recover \$100.00 of rent paid to the landlord for an additional occupant for the month of July 2010?

Background and Evidence

The tenancy commenced March 15, 2010 and the tenant paid a \$450.00 security deposit. The tenant stated that she was not provided a copy of the tenancy agreement. However, shortly after the tenancy commenced an additional occupant moved into the rental unit. The landlord and tenant had agreed that the tenant would pay an extra \$100.00 per month for an additional occupant starting April 2010. The tenancy ended at the end of July 2010 pursuant to a notice to end tenancy for landlord's use of property.

The tenant stated that she received a 2 Month Notice to End Tenancy for Landlords' Use of Property in the approved form and paid rent for July 2010, the last month of tenancy; however, the tenant had not applied for compensation for the last month of tenancy except for \$100.00 in making this application. Nor did the tenant provide a copy of the Notice to End Tenancy. The tenant was informed of compensation provided to tenants under section 51 of the Act and of her right to make a subsequent application for such compensation.

I heard that a move-in inspection was performed together but that an inspection report was not prepared by the landlord or given to the tenant. The tenant gave her forwarding address to the landlord in writing by delivering it to the landlord's house on September 15, 2010. The tenant stated that she did not authorize any deductions from her security deposit in writing and has not been refunded the security deposit. Rather, the landlord delivered receipts to the tenant at her place of work on October 14, 2010.

In addition to return of the security deposit, the tenant requested return of \$100.00 that was paid to the landlord for an additional occupant in July when the additional occupant was not residing in the rental unit.

In the landlord's written submissions the landlord provides a copy of a tenancy agreement; however, the tenant stated she was not served with a copy of it. The tenancy agreement identifies a total of three tenants; however, only the tenant appearing before me signed the agreement. There is no date next to the tenant's signature but next to the landlord's signature is March 28, 2010. I also note that in the space provided for the amount of rent it appears as though it was originally written as \$900.00 and then changed to \$1,000.00 which was initialled by the landlord but not the tenant.

From the landlord's written submission it appears as though the landlord is of the position that three people were living in the rental unit until July 5, 2010 and the tenant is not entitled to return of the \$100.00 the tenant is claiming. The landlord also appears to indicate that the landlord incurred damages in excess of the security deposit.

Analysis

The landlord's claims for damages were not issues for me to decide for this proceeding as the landlord had not made an application for dispute resolution. The purpose of this hearing was to hear the tenant's application for dispute resolution and determine whether the landlord complied with the Act with respect to handling of the security deposit. The landlord is at liberty to make a separate application for damages.

Section 38 of the Act provides for the return of security deposits. Under section 38(1) the landlord was required to either return the security deposit to the tenant or make an application for dispute resolution within 15 days from the later of the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing. Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit. The requirement to

pay double the amount of the deposit is not discretionary and must be administered in accordance with the Act.

In making the tenant's application for dispute resolution she stated she gave the landlord her forwarding address and the landlord did not refute this statement. Therefore, I accept the tenant's submission that she provided the landlord with her forwarding address on September 15, 2010 as she stated. Accordingly, the landlord had 15 days for its receipt to return the deposit or file an application for dispute resolution. I conclude that the landlord did not meet the requirements of section 38(1) of the Act and the tenant is entitled to return of double the security deposit.

Although the tenant may be entitled to recovery of all of the rent she paid for July's rent under section 51 of the Act, I cannot consider that as such a claim was not part of this application and I was not provided sufficient evidence of such entitlement. Therefore, I limit my decision to consider whether the tenant is entitled to return of \$100.00 of July's rent.

Upon hearing from the tenant and upon review of the tenancy agreement provided by the landlord, I find, based on the balance of probabilities, that the tenant signed a tenancy agreement that provided for payment of a monthly rent of \$900.00. This is also consistent with the payment of \$450.00 for a security deposit. I am further satisfied that there was subsequent discussion about an additional occupant and payment of an additional \$100.00 in rent. However, it appears to have altered the amount of rent owed by the tenant as opposed to adding an additional occupant clause and I in the absence of the tenant's initials where the change was made I do not find sufficient evidence this was agreed to by the tenant.

I do not find the altered amount of rent to be enforceable. Nor, do I find the landlord increased the rent in a manner that complies with the requirements of the Act with respect to rent increases. Therefore, I grant the tenant's request for return of \$100.00 in additional rent paid for July 2010.

For clarity, since I have ordered return of \$100.00 of the rent paid for July 2010 the tenant is considered to have paid rent of \$900.00 for the month of July 2010 should the tenant pursue tenant's compensation under section 51 of the Act.

As the tenant was successful in her application I award the filing fee to the tenant. The tenant has been provided a Monetary Order calculated as follows:

Double security deposit (\$450.00 x 2)	\$ 900.00
Overpayment of July rent	100.00
Filing fee	<u>50.00</u>
Monetary Order	\$ 1,050.00

The tenant must serve the enclosed Monetary Order upon the landlord and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The tenant has been awarded compensation of \$1,050.00 and has been provided a Monetary Order in that amount to serve upon the landlord.

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 04, 2011.

Residential Tenancy Branch