

DECISION

Dispute Codes MNSD, FF

Introduction

This is an application filed by the Tenant for a monetary order for the return of double the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. The Tenant and Landlord noted in the application did not attend. The Tenant's mother appeared as agent stating that her daughter is incapacitated medically in a hospital and that she had power of attorney to deal with her daughters affairs. The Owner's attended as Landlords as shown in the Landlord's signed Tenancy Agreement.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order for return of double the security deposit?

Background and Evidence

This Tenancy began on December 11, 2010 on a fixed term tenancy for 3 months ending on March 1, 2011 and then thereafter on a month to month basis as shown in the signed tenancy agreement. The monthly rent was \$1,000.00 payable on the 1st of each month. The Landlord confirmed in her direct testimony a security deposit of \$500.00 from a previous Tenancy Agreement on December 16, 2009. A copy was filed by the Tenant.

The Tenant's Agent states that the Tenancy ended on May 31, 2011 where a note was given to the Landlord's Agent, E.O. as reflected in the note dated June 22, 2011 provided by the Tenant. The Landlord disputes this stating that their first notice of the Tenant's forwarding address in writing was given to them in the evidence package on June 22, 2011. The Landlord confirms that they did not file for dispute or get consent to retain the security deposit within the allowed 15 days. The Tenant states that she has no evidence to support her claim that the forwarding address in writing was provided on May 31, 2011.

Analysis

As both parties have attended the hearing by conference call and have made detailed reference to the evidence submitted, I am satisfied that both have been properly served with the notice of hearing and evidence packages.

I find based upon the direct testimony of both parties that the forwarding address in writing was not provided by the Tenant on May 31, 2011 as this issue is in dispute and the Tenant has failed to provide any supporting evidence. A verbal decision was made during the hearing by this writer to dismiss the Tenant's claim for the return of double the security deposit and recovery of the filing fee. Upon review of the legislation and the direct testimony from the Landlord, I have reversed this decision. The Landlord in her direct testimony stated that she was aware of the Tenant's forwarding address in writing when she received the June 22, 2011 note stating the Tenant's address in the evidence package. Residential Tenancy Act Section 38 states,

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The Landlord was aware of the Tenant's claim and was in receipt of the forwarding address in writing from the Tenant, I find that the Landlord failed to apply for dispute

resolution within the allowed 15 days from receipt of the address. The Tenant has established a claim for the return of double the security deposit. The Landlord disputes this claiming that this was all from a result of damage to the rental unit. The Landlord has not filed for dispute resolution for damages or to retain the security deposit.

The Tenant is entitled to recovery of the \$50.00 filing fee. I find that the Tenant has established a total claim for \$1,000.00 (double the \$500.00 security deposit). I grant the Tenant a monetary order for \$1,050.00 under section 67 for the balance due. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Tenant is granted a monetary order for \$1,050.00.

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: September 16, 2011.

Residential Tenancy Branch