



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant's agent. The landlord did not attend.

The tenant's agent testified the landlord was served personally with notice of this hearing on June 5, 2011 and was photographed as documentation of this service.

Based on the agent's testimony, I find that the landlord has been sufficiently served with the notice of hearing documents pursuant to the *Residential Tenancy Act (Act)*.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for all or part of the security deposit; for repayment of hydro charges and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The agent testified the tenancy began on December 1, 2010 as a 1 year fixed term tenancy with a monthly rent of \$1,950.00 due on the 1st of each month and that a security deposit of \$975.00 and a pet damage deposit of \$975.00 were paid.

The tenant also provided a copy of a receipt from the landlord confirming she received a payment of \$550.00 to "cover all hydro consumption....until the end of December 2011". The tenant seeks return of the balance of the hydro payment from April 2011 to December 2011.

The agent confirmed the tenant returned keys for the rental unit to the landlord and completed a move out condition inspection with the landlord on March 29, 2011. The tenant provide a copy of a letter sent to the landlord dated April 1, 2011 providing the landlord with the tenant's forwarding address.

The tenant provided copies of email correspondence between the tenant's agent and the landlord between March 20, 2011 and April 6, 2011. This correspondence includes the agent advising the landlord that one of the tenants is moving out (March 20, 2011) and that the other tenant will also be moving out (March 22, 2011).

In the final email submitted the landlord states that because the tenants gave only 8 days notice and she was not able to rent the unit for April 1, 2011, she will not return the security deposit. The landlord included a handwritten letter attachment from one of the tenants dated December 5, 2010 that says that if the tenants do not give the landlord 30 days notice to end the tenancy the landlord may keep both deposits.

Analysis

As a landlord can only require tenants pay security deposits and/or pet damage deposits to be held as security for any liability or obligation of the tenant respecting the residential property, I find the deposit for hydro usage was contrary to the *Act* and the landlord had no authority to collect it.

As per the tenant's Application the tenant seeks only to a refund of the "unused" portion of this "deposit" I find the tenants are entitled to its return in the amount of \$366.66 representing the potential usage from April 2011 to December 2011.

Section 38(4) states that the landlord may retain an amount from a security deposit or a pet damage deposit if **at the end of a tenancy**, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.

In the absence of the landlord's testimony but based on the evidence submitted by the tenant, I accept that the landlord relied upon the handwritten note from one of the tenants dated 5 days *after the start* of the tenancy to determine that she had authority to retain the pet damage and security deposits, if the tenants failed to provide 30 days notice to end the tenancy.

However, as noted Section 38(4) allows the landlord to retain amounts from the deposits only if the tenant agrees in writing *at the end of the tenancy*. As I have no evidence before me that the landlord had any written agreement from the tenants at the *end of the tenancy* regarding the retention, I find the landlord had no authority to retain any amounts from either deposit.

Section 38(1) of the *Act* stipulates that the landlord must, within 15 days of the end of the tenancy and receipt of the tenants forwarding address, return the security and pet damage deposits to the tenants or file an Application for Dispute Resolution to claim against the security deposit for any damage or loss the landlord may have incurred.

I accept the tenancy ended on or before March 31, 2011 and that the tenant provided her address in writing to the landlord on April 1, 2011. To be compliant with Section

38(1) the landlord would have to return the security deposit to the tenant no later than April 16, 2011.

Section 38(6) goes on to say that should the landlord fail to comply with Section 38(1) she must pay the tenant double the amount of the security deposit held. Based on the above, I find the landlord has failed to comply with Section 38(1).

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$4,316.66** comprised of \$1,950.00 double the security deposit; \$1,950.00 double the pet damage deposit; \$366.66 return of prepaid hydro and the \$50.00 fee paid by the landlord for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced 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: September 07, 2011.

Residential Tenancy Branch