



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 return of double the security deposit. Both parties appeared at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Is the tenant entitled to return of double the security deposit?

Background and Evidence

The tenancy commenced June 1, 2010 and the tenant paid a \$400.00 security deposit. The tenant was required to pay rent of \$800.00 on the 1st day of every month. Utilities were not included in rent. The rental unit was a basement unit and the main level unit was also tenanted. The landlord had an arrangement whereby the main level tenant would be responsible for putting utilities in their name and then collecting the tenant's share from her directly.

The tenant vacated the rental unit May 31, 2011 and put her forwarding address in the landlord's mailbox on May 31, 2011. The tenant did not authorize the landlord to make any deductions from her security deposit in writing. The landlord sent the tenant a cheque for \$294.75 after deducting \$105.25 which was calculated as 20% of the utility bills not paid by the main level tenant. The cheque was accompanied by a cover letter and a copy of the utility bill.

The landlord dated the covering letter that accompanied the cheque June 6, 2011; the postmark reads 110614; and the tenant received the mail June 30, 2011 due to the postal strike. The tenant has not cashed the cheque as she did not agree with it.

The landlord submitted that he has had to pay the utility bills incurred at the property because the main level tenant did not. The landlord was of the position that the tenant's portion of the bill was \$105.25 and he is entitled to recover that from the tenant. The landlord was of the position that he had a verbal discussion regarding making a deduction from the security deposit for utilities and the tenant did not indicate to him that she disagreed.

The landlord also indicated that he suffered other losses from this tenancy. The landlord was informed of his right to make his own Application for Dispute Resolution.

Analysis

As the parties were informed during the hearing, the landlord's damages or losses 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 and determine whether the landlord complied with the Act with respect to the security deposit. The landlord is at liberty to make a separate application for his damages or losses he may have incurred as a result of this tenancy.

Section 38 of the Act provides for the return of security deposits. The Act permits a landlord to obtain a tenant's written consent for deductions for damages or losses; however, if written consent is not obtained section 38(1) of the Act requires the landlord to either return the deposit to the tenant or make an Application for Dispute Resolution within 15 days of the date the tenancy ended or upon receiving the tenant's forwarding address in writing, whichever date is later.

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.

The landlord indicated the tenant did not verbally object to a deduction for utilities. I also note that the landlord indicated that he would be making a deduction from the tenant's security deposit via an email sent to the tenant May 29, 2011. I accept that the tenant received the email since she responded to it and that her response did not include an objection to a deduction for utilities. However, I find that silence on the matter does not meet the landlord's obligation to obtain the tenant's written consent for deductions.

I find that the tenancy ended May 31, 2011 and the tenant provided her forwarding address to the landlord in writing which is deemed to be received by the landlord three days later on June 2, 2011. Since the landlord did not have the tenant's consent to make deductions from the security deposit he was obligated to refund all of the deposit or file an Application for Dispute Resolution no later than June 17, 2011 in order to comply with section 38(1) of the Act. Since the landlord violated section 38(1) the landlord must now pay the tenant double the security deposit pursuant to section 38(6) of the Act.

As the tenant was successful in this application, the tenant is awarded the filing fee paid for making this application. I calculate that the landlord is obligated to pay the tenant the following amount:

Double security deposit (\$400.00 x 2)	\$ 800.00
Filing fee	<u>50.00</u>
Monetary Order for tenant	\$ 850.00

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 provided a Monetary Order in the amount of \$850.00 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: October 05, 2011.

Residential Tenancy Branch