



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a Monetary Order for the return of the balance of her security deposit and for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, Regulations or tenancy agreement and to recover the filing fee paid for this proceeding. The tenant later withdrew her application for a Monetary Order for money owed or compensation for damage or loss.

The tenant served the landlord in person on August 04, 2011 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

The tenant appeared at the start of the hearing and was provided the opportunity to make submissions to me. The landlord later joined the conference call, gave testimony and then left the call. On the basis of the evidence presented at the hearing I have determined:

Issues(s) to be Decided

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

Background and Evidence

The tenant testifies that this tenancy started on May 16, 2010. This was a fixed term tenancy for one year. The tenant states she lived in the unit with another co-tenant who moved out at the end of the fixed term. The tenant states she remained in the unit by

agreement with the landlord for another month and moved out on June 30, 2011. Rent for this unit was \$1,200.00 per month and was due on the first of each month. The tenants paid a security deposit of \$600.00 on May 16, 2010. The tenant states each tenant paid \$300.00 towards the security deposit and when the other tenant moved out she gave that tenant his \$300.00 share of the security deposit. The tenant testifies she gave the landlord her forwarding address in writing on June 29, 2011.

The tenant testifies that she did not authorise the landlord to make any deductions from their deposits. The tenant testifies she received a cheque from the landlord on July 20, 2011 for \$450.00. The tenant states she filed her application for Dispute Resolution to recover the balance of the security deposit and after serving the landlord with the Notice of Hearing the landlord then sent the tenant another cheque for \$150.00 on August 12, 2011.

The tenant testifies she had applied for compensation from the landlord as he did not return the security deposit within the allowable time but was not aware she could have applied to double the security deposit instead. As she is now aware of this section of the *Act* the tenant withdraws her claim for compensation and requests double the security deposit.

The tenants also seek to recover the filing fee of \$50.00 paid for this application.

The landlord states, he did not get a forwarding address for the other tenant so held on to his security deposit. The landlord agrees that he did send a cheque to this tenant for \$450.00 and later sent another cheque to her for \$150.00. He states he assumed this tenant would give the other tenant his share of the deposit.

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.

The Residential Tenancy Policy Guidelines #13 deals with the responsibility of tenants and deals in part with the security deposit. This guideline states:

A security deposit or a pet damage deposit is paid in respect of a particular tenancy agreement. Regardless of who paid the deposit, any tenant who is a party to the tenancy agreement to which the deposit applies may agree in writing to allow the landlord to keep all or part of the deposit for unpaid rent or damages, or may apply for arbitration for return of the deposit.

Based on the above and the evidence presented I find that the landlord did receive this tenants forwarding address in writing on June 29, 2011 and the tenancy ended on June 30, 2011. As a result, the landlord had until July 15, 2011 to return all of the tenant's security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return the security deposit within the 15 allowable days and has not filed an application for Dispute Resolution to keep the deposit. Therefore, I find that the tenant has established a claim for the return of double the security deposit. As the landlord has returned all the security deposit since the tenants application, the tenant would now be entitled to receive a Monetary Order to the sum of **\$600.00** for the doubled portion of the security deposit pursuant to section 38(6)(b) of the *Act*.

I also find the tenant is entitled to recover the **\$50.00** filing fee from the landlord pursuant to section 72(1) of the *Act*.

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 **\$650.00**. The order must be served on the respondent 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: November 04, 2011.

Residential Tenancy Branch