



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the tenant for double recovery of the security deposit or pet damage deposit and to recover the filing fee from the landlord for the cost of this application.

The tenant attended the conference call hearing, gave affirmed testimony and provided evidence for the hearing. Despite being served with the Tenant's Application for Dispute Resolution and notice of hearing documents by registered mail on September 2, 2011, the landlord did not attend. The tenant provided a copy of a Canada Post receipt and registration prior to the commencement of the hearing. I find that the tenant has served the landlord in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided have been reviewed and are considered in this Decision.

Issue(s) to be Decided

Is the tenant entitled to return of all or part of the pet damage deposit or security deposit, or double the amount of such deposit?

Background and Evidence

The tenant testified that this month-to-month tenancy began on September 30, 2009 and ended on June 8, 2011, however the tenant went back to the rental unit on June 13, 2011 to clean. Rent in the amount of \$1,600.00 per month was payable in advance on the 1st day of each month, and there are no rental arrears. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$800.00, and no pet damage deposit was collected.

The tenant also testified that the landlord served the tenant with a notice dated March 28, 2011 stating that the house had been sold and the tenant was provided with 3 months notice to vacate the rental unit. A copy of the notice was provided for the

hearing, however, the notice is not in a prescribed form, but typewritten on plain paper. The tenant paid all rent for the month of June, 2011, but the landlord did not provide the tenant with the equivalent of one month's rent as required under the *Residential Tenancy Act*.

The tenant further testified that the tenant agreed that the landlord could keep \$120.00 of the security deposit for carpet cleaning, as well as \$150.00 for damaged blinds as well as \$90.00 for gas for the lawn mower, for a total of \$360.00.

The tenant also provided a string of emails exchanged between the parties from June 12, 2011 to August 25, 2011. One email is addressed to the landlord from the tenant dated June 14, 2011 which contains the tenant's forwarding address, but no response from the landlord was provided. Another email dated July 20, 2011 from the landlord to the tenant was provided wherein the landlord requests the forwarding address of the tenant, and a response from the tenant the same day sets out the address.

The tenant also provided a copy of the receipt issued for the security deposit in the amount of \$800.00.

Analysis

The *Residential Tenancy Act* states that a landlord may not arbitrarily keep a security deposit. The landlord has 15 days from the later of the date the tenancy ends or the date the tenant provides a forwarding address in writing to apply to keep all or part of the security deposit or return it in full to the tenant. If the landlord fails to do so, the tenant is entitled to double recovery of the security deposit. In this case, I find that the tenancy ended on June 13, 2011, when the tenant returned to the rental unit to clean, and the tenant provided a forwarding address in writing by email, which was acknowledged by the landlord on July 20, 2011. Therefore, I find that the tenant is entitled to double recovery of the security deposit. However, the tenant testified that the parties agreed to deduct \$360.00 from the security deposit for damages. Therefore, I find that the landlord owes the tenant \$1,600.00 less \$360.00, for a total of \$1,240.00.

It is also important for the landlord to know that in order to take possession of a rental unit for the landlord's use, including selling the unit, the landlord must serve the tenant with a proper form. The form is called a 2 Month Notice to End Tenancy for Landlord's Use of Property. The landlord must serve the tenant with the notice the day before the day rent is payable under the tenancy agreement, and 2 months before the date the landlord wants possession. Further, the landlord is required under the *Act* to provide the tenant with the equivalent of one month's rent. Often landlords allow a tenant to remain in a rental unit for free for the last month of the tenancy, which satisfies that

section of the *Act*. However, the tenant may give the landlord 10 days notice to vacate the rental unit once the tenant has received the landlord's 2 month notice, and the tenant is only required to pay rent to the end of the 10 day notice, and is still entitled to receive the equivalent of one month's rent. The tenant has not made that application and therefore, I am not at liberty to make such an order.

The tenant is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,290.00. This order is final and binding on the parties and may be enforced.

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: December 01, 2011.

Residential Tenancy Branch