



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 repose to the tenants application to recover double her security deposit and to recover the filing fee from the landlord for the cost of this application.

The tenant, the landlord and the landlords agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The tenant provided documentary evidence to the Residential Tenancy Branch in advance of this hearing but this evidence was not provided to the other party and has not been considered. The testimony of the parties has been reviewed and is considered in this decision.

Issue(s) to be Decided

Is the tenant entitled to recover double her security deposit?

Background and Evidence

Both parties agree that this tenancy was due to start on December 01, 2011. This was a verbal agreement for a month to month tenancy at a monthly rent of \$800.00 due on the first of each month. The tenant paid a security deposit of \$400.00 on October 28, 2011.

The tenant testifies that the landlord agreed to make repairs to the rental unit before the start of her tenancy but failed to do so. The tenant states as these repairs were not made the tenant states she could not move into the rental unit and gave the landlord written Notice that she would not be moving in. The tenant states she gave this letter to the landlord in person on November 15, 2011. The tenant states this letter also contained the tenants forwarding address and her request for the return of her security deposit.

The tenant testifies that she spoke to the landlord when she gave the landlord this letter and asked the landlord if she understood what was in the letter. The tenant states she explained to the landlord that the landlord only had 15 days to return the tenants security deposit. The tenant states the landlord has not returned her security deposit and the tenant seeks to recover double the deposit in accordance with the *Act*.

The landlord's agent states the landlord agrees she did get the tenants letter concerning the tenancy and the tenants forwarding address. The landlords agent testifies that the landlord did not receive this letter containing the tenants forwarding address until December 01, 2011. The landlord's agent states the landlord sought advice and was told as the tenant did not give sufficient notice to end the tenancy that the landlord could keep the security deposit because the landlord had to re-rent the unit.

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.

Based on the above and both parties oral testimony, I find that the landlord did receive the tenants forwarding address in writing dated November 15, 2011. As the parties contradict each other as to the date this letter was given to the landlord, the tenant has the burden of proof to show that the latter with her forwarding address was given to the landlord on November 15, 2011. As the tenant has not met this burden of proof it is my decision that the landlord received the tenant's letter containing her forwarding address on December 01, 2011.

As a result, the landlord had until December 15, 2011 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return the security deposit and has not filed an application for Dispute Resolution to keep all or part of the security deposit. Therefore, I find that the tenant has established a claim for the return of double the security deposit to the sum of **\$800.00** 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*. The tenant is entitled to a Monetary Order as follows:

Double the security deposit	\$800.00
Filing fee	\$50.00
Total amount due to the tenants	\$850.00

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 **\$850.00**. 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: March 05, 2012.

Residential Tenancy Branch