



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This is an Application under the Residential Tenancy Act, (the "Act"), by the Tenant for a monetary order for return of the security deposit and recovery of the filing fee.

The Tenant attended the hearing and provided affirmed testimony that she served the Landlord, by registered mail with the Application for Dispute Resolution and Notice of Hearing on March 22, 2012, and provided the customer receipt/tracking slip from Canada Post as evidence.

I find that the Landlord was served the Application and Notice of Hearing in accordance with section 88 of the *Residential Tenancy Act* (the "Act").

The Landlord did not participate in the conference call hearing. The Tenant was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Has there been a breach of Section 38 of the Act by the Landlord?

Background and Evidence

The Tenant testified that she paid the Landlord a security deposit of \$425.00 on February 22, 2012. The Tenant provided into evidence a copy of the tenancy agreement she signed with the Landlord which states the amount of the security deposit and rent. The tenancy agreement states that the monthly rent was \$850.00 per month. The Tenant stated that although the tenancy agreement states March 01, 2012 was the start of the tenancy, she was allowed to move in early if she wished to and she received the keys from the Landlord on February 22, 2012 when she paid the security deposit.

The Tenant stated that she brought some boxes to the rental unit on February 23, 2012 and was preparing to move in. The Tenant stated that she had booked a moving truck for February 29, 2012. The Tenant stated that she discovered that the rental unit, which is a basement suite, had no electric baseboard heaters. The Tenant stated that she advised the Landlord of her concern with there being no baseboard heaters and was informed by the Landlord that the rental unit was heated by forced air heating from the

furnace and that the Landlord controlled the temperature gage for the whole house and promised to keep the heat high enough. The Tenant stated that she was concerned that there would be inadequate heat to the rental unit and she found this unacceptable. The Tenant stated that she advised the Landlord on February 24, 2012 that she would not be moving in and she cancelled the moving truck. The Tenant stated that Landlord resides upstairs from the rental unit and was aware that she had vacated the rental unit and ended the tenancy as of February 24, 2012. The Tenant stated that the Landlord initially verbally agreed to return the security deposit but then on February 25, 2012 changed their mind and refused to do so. The Tenant stated that she sent the Landlord a letter dated February 27, 2012 by registered mail on February 28, 2012 requesting return of the security deposit and providing her forwarding address. The Tenant provided into evidence a copy of the letter to the Landlord with her forwarding address and the registered mail receipt and tracking information showing February 28, 2012 as the mailing date.

The Tenant stated that she did not authorize the Landlord to keep the security deposit. The Tenant stated that the Landlord did not return the security deposit and more than 15 days have passed since she provided them her forwarding address. The Tenant filed for dispute resolution on March 22, 2012.

The Tenant is seeking return of double their security deposit in accordance with the Act, and the filing fee for their application.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Landlord is in breach of the Act.

Based on the undisputed testimony of the Tenant, I find that the Tenant commenced her tenancy of the rental unit on February 22, 2012, and that she ended the tenancy on February 24, 2012. I find that the Landlord was notified by the Tenant that tenancy ended as of February 24, 2012. The Tenant communicated with the Landlord, and the Landlord resides upstairs from the rental unit and was aware the tenancy ended and the rental unit was vacant as of February 24, 2012. The Tenant made a formal request in writing for return of her security deposit on February 28, 2012. The Tenant did not authorize the Landlord to keep the security deposit after the tenancy ended. The Tenant provided her written forwarding address to the Landlord by registered mail on February 28, 2012. The Tenant filed an application for dispute resolution on March 22, 2012 and served this on the Landlord, along with the hearing notice package, by registered mail the same date.

There is no evidence that the Landlord returned the security deposit or that the Landlord applied for dispute resolution, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant.

I find that the Landlord has breached section 38 of the Act. The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies. The security deposit is held in trust for the Tenant by the Landlord. At no time does the Landlord have the ability to simply keep any portion of the security deposit because they feel they are entitled to it or are justified to keep it.

The Landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from a Dispute Resolution Officer, or the written agreement of the Tenant. Here the Landlord did not have any authority under the Act to keep any of the security deposit and the Tenant stated that she did not authorize any deduction from the security deposit.

Section 38(6) of the Act requires that a Landlord pay a Tenant double their security deposit if the Landlord has failed to return the security deposit to the Tenant within 15 days of receiving the Tenant's forwarding address and has failed to apply for dispute resolution within that time frame. I find that the Tenant is entitled to \$850.00, which consists of double the security deposit ($\$425.00 \times 2 = \850.00).

I find that the Tenant has succeeded in her Application, as a result she is entitled to recover the \$50.00 filing fee for this Application. As a result, the Tenant is entitled to a monetary order against the Landlord in the total amount of \$900.00.

Conclusion

Having made the above findings, I must order, pursuant to section 38, 67, and 72 of the Act, that the Landlord pay the Tenant the sum of \$900.00, comprised of double the security deposit ($\$425.00 \times 2 = \850.00) and the filing fee for this application (\$50.00).

The Tenant is granted a formal monetary order for **\$900.00** and the Landlord must be served with a copy of this order as soon as possible. Should the Landlord fail to comply with this order, the order may be filed in the Small Claims division of the Provincial Court and enforced as an order of that court.

The order is attached to the Tenant's copy of this decision.

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: April 18, 2012.

Residential Tenancy Branch