



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OLC, FF

Introduction

This hearing dealt with an application by the tenant for return of the security deposit, to order the landlord to comply with the Act and recovery of the filing fee.

Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is the tenant entitled to any of the above under the Act.

Background and Evidence

This tenancy began in 2008, with monthly rent of \$550.00 and the tenant paid a security deposit of \$250.00.

On January 22, 2012, the parties signed a mutual agreement to end the tenancy and the tenant was given two weeks from that date to vacate the rental unit. The tenant provided her forwarding address to the landlord on or around January 30, 2012.

The tenant stated that in the original March 8, 2012 hearing the landlord read text messages that went back and forth between the parties and gave the impression that he had contacted the tenant to complete a move out inspection. Based on that information the Dispute Resolution Officer ruled in favour of the landlord. The tenant applied for a review hearing under the grounds of fraud and that hearing was granted.

The tenant stated that she contacted the manufacturer of her cell phone and obtained information on how to recover deleted text messages. The tenant has submitted these text messages into evidence and stated that they clearly show the landlord talking about having prospective tenants viewing the rental unit but that he makes no mention of a date and time for a move out inspection. The tenant also noted that no move in inspection was ever completed with the landlord and tenant.

The landlord referred to a text message where he talks about 2 days for prospective tenants to view the rental unit and that he would like to 'plan' a move out inspection. The landlord stated that he believed this text to be evidence of specific dates and time for the move out inspection to be completed; the tenant reiterated that she did not consider this to be specific dates and times to complete the move out inspection. The landlord stated that he also posted a Notice of Final Inspection on the tenant's door on January 30, 2012 at approximately 5PM, with a witness. The tenant refuted this testimony and stated that she never received any such notice and if she had she would never have ignored it. The landlord refuted the tenant's testimony that deleted messages could be recovered off her cell phone and the tenant offered to submit her cell phone into evidence if necessary to verify the text messages.

The landlord also referred to the move in condition inspection report which is not signed by either the tenant or landlord; this report was completed after the landlord and tenant's boyfriend did a walkthrough of the rental unit. The tenant stated that this inspection was never completed with her and she was never provided a copy of this report during her tenancy. The move out condition inspection report was completed without the tenant present.

The landlord referred to the cost of repairs and cleaning that were required in the rental unit and the landlord is at liberty to make an application through this office for the recovery of any costs associated with this tenancy.

At the conclusion of the hearing the landlord stated he was moving out of the country and he would phone his new address into the branch and mail it to the tenant.

Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenant has met the burden of proving that they have grounds for entitlement to a monetary order for return of double the security deposit.

Section 38(1) of the *Residential Tenancy Act* provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the landlord received the tenant's forwarding address in writing; the landlord in this case had done neither.

I am not satisfied that the landlord provided the tenant with 2 opportunities to complete a move out inspection and it must also be noted that a proper move in inspection was never completed in relation to this tenancy. There is also no agreement in place whereby the landlord was entitled to keep any portion of the tenant's security deposit.

Section 38(6) of the *Residential Tenancy Act* provides in part that if a landlord does not comply with his statutory obligation to return the security deposit within 15 days, the

landlord must pay the tenant double the amount of the deposit. Accordingly I find that the tenant is entitled to a monetary order for \$500.00.

Section 38 of the Residential Tenancy Act speaks to:

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [landlord failure to meet start of tenancy condition report requirements] or 36 (2) [landlord failure to meet end of tenancy condition report requirements].

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

As the tenant has been successful in their application the tenant is entitled to recovery of the \$50.00 filing fee.

Conclusion

I find that the tenant has established a monetary claim for \$500.00 in return of double the security deposit. The tenant is also entitled to recovery of the \$50.00 filing fee. I grant the tenant a monetary order under section 67 for the amount of **\$550.00**.

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 24, 2012

Residential Tenancy Branch