



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to obtain a return of double her security deposit pursuant to section 38; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to discuss the circumstances surround the end to this tenancy with one another. The tenant testified that she sent a copy of her dispute resolution hearing package to the landlord at the best mailing address she had for the landlord by registered mail on March 30, 2012. She provided a copy of the Canada Post Tracking Number and Customer Receipt to confirm this mailing. The landlord testified that he did receive the tenant's dispute resolution hearing package by registered mail on April 12, 2012, although it was initially sent to an incorrect suite number at his property. He asked for an adjournment of this hearing if necessary. I am satisfied that the landlord did receive a copy of the tenant's hearing package in sufficient time to enable him to respond to the case against him at this hearing.

Issues(s) to be Decided

Is the tenant entitled to a monetary award for the return of a portion of her security deposits? Is the tenant entitled to a monetary award equivalent to the amount of her security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This one-year fixed term tenancy commenced on September 1, 2011. Monthly rent was set at \$1,200.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$600.00 security deposit paid on August 10, 2011. The tenant

vacated the rental unit on February 27, 2012, before the end of her fixed term tenancy on August 31, 2012.

The tenant applied for a monetary award of \$1,200.00, as she maintained that the landlord had failed to return her security deposit in full within 15 days of the end of her tenancy or her provision of her mailing address in writing to the landlord, both which occurred on February 27, 2012. She said that she handed the landlord her forwarding address in person when she ended her tenancy on February 27, 2012. She did not retain a copy of the document she said she gave to the landlord that date showing her mailing address nor did she have a witness who could confirm that she handed the landlord her forwarding address in writing. The tenant also entered into written evidence a copy of her March 24, 2012 written request for the return of her security deposit which also included her mailing address. Although the document stated that this letter was delivered by hand, she testified that she did not hand her March 24, 2012 letter to the landlord. She said that one of her friends witnessed her place this letter under the landlord's door. She did not enter written evidence from that witness nor did the witness participate in this hearing.

The landlord testified that he never received the tenant's forwarding address in writing until April 11, 2012, when he received an evidence package from the tenant with respect to this hearing. He said that the tenant did not have his accurate address as he had moved since the end of her tenancy. He denied the tenant's claim that she handed him her mailing address on February 27, 2012. He testified that he did not see the tenant on February 27, 2012 at the end of her tenancy as she left her keys inside the rental unit where he recovered them.

The landlord maintained that he was still within the 15-day period for either returning the tenant's security deposit in full or applying for dispute resolution to be granted authorization to retain that deposit. He testified that he was planning to file an application for dispute resolution to retain the tenant's security deposit because he was unable to rent the tenant's rental suite to another tenant for the same rent that she was paying. He said that the new tenant he secured took possession on March 1, 2012 and is paying \$1,100.00 per month. He said that he intended to apply for an order to enable him to recover the \$100.00 monthly loss he will experience for the six months that remained in the tenant's fixed term tenancy when she ended her tenancy early. He said that he would be seeking a monetary award of \$600.00 plus the retention of his filing fee.

Analysis

Pursuant to section 63 of the *Act*, the dispute resolution officer may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to resolve all issues arising out of this tenancy under the following terms:

1. Both parties agreed that the landlord will retain the tenant's security deposit.
2. The tenant agreed to withdraw her application for dispute resolution.
3. Both parties agreed that they will not file any further application for dispute resolution arising out of this tenancy.
4. Both parties agreed that this settlement agreement constituted a final and binding resolution of all issues arising out of this tenancy.

Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I order the landlord to retain the tenant's security deposit. The tenant's application for dispute resolution is withdrawn.

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 19, 2012

Residential Tenancy Branch