



Dispute Resolution Services

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Residential Tenancy Branch

Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, RPP, FF

Introduction

This matter dealt with an application by the Tenant for the return of double the security deposit, the return of personal property and the recovery of the filing fee for this proceeding.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the “hearing package”) by personal delivery on February 17, 2012. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlord’s absence.

Issues(s) to be Decided

1. Is the Tenant entitled to the return of his security deposit?
2. Is the entitled to the return of personal property left at the rental unit?

Background and Evidence

This tenancy started on March 1, 2008, as a month to month tenancy. The tenancy ended January 31, 2012. Rent was \$550.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$250.00 on March 1, 2008.

The Tenant said she gave the Landlord her notice to end tenancy on January 1, 2012 for February 1, 2012. The Tenant said she paid the full January, 2012 rent of \$550.00. The Tenant continued to say she started moving her personal property out of the rental unit on January 27, 2012 and when she returned on January 28, 2012 the Landlord had changed the locks and would not give her access to retrieve her property and belongings. Some of the personal property included food staples, a bar-b-que, towels and 12 boxes of clothing and children’s things including clothing and toys. The Tenant said the Landlord said she was not allowed into the rental unit and because of markings on the wall the Landlord said she would not return the Tenant’s security deposit. The Tenant said she then requested the security deposit to be returned to her in a letter she wrote the Landlord on January 29, 2012, which also contained her forwarding address. The Tenant said the Landlord has not returned her security deposit and she cannot get access from the Landlord to retrieve her personal property.

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The Tenant said she is applying for the return of double the security deposit as the Landlord has not complied with the s. 38 of the *Residential Tenancy Act*.

Analysis

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says 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.

I find from the Tenant's testimony she did give the Landlord a forwarding address in writing on January 29, 2012 and again in the application package dated February 16, 2012. The Landlord did not repay security deposit to the Tenant within 15 days of the end of the tenancy or after receiving a forwarding address in writing from the Tenant, nor did the Landlord apply for dispute resolution. Consequently I find for the Tenant and grant an order for double the security deposit of \$500.00 plus accrued interest from March 1, 2008 of \$3.14 for a total amount of \$503.14.



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As the Tenant has been successful in this matter I find the Tenant can recover the filing fee of \$50.00 from the Landlord.

As well I Order the Landlord to provide access to the unit for the Tenant to retrieve her personal property for a period of 2 days so that the Tenant has time to transport all her items. The Tenant is at liberty to apply in the future for an Order of Possession if the Landlord does not comply to this decision and the Tenant may apply for monetary compensation if the Landlord cannot provide access to all of the Tenant's belongings.

Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 38 of the Act, I grant a Monetary Order for \$553.14 to the Tenant. 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*.

Dispute Resolution Officer