



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR,

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for the return of the security deposit and rent paid to the landlord.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on March 5, 2012, a Canada post tracking number was provided as evidence of service, the landlord did not appear.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the landlord has been duly served in accordance with the Act.

Issue(s) to be Decided

Is the tenant entitled to a monetary order?

Background and Evidence

The tenant testified that the landlord accepted her security deposit in the amount of \$287.50 and rent for February 2012, in the amount of \$500. However, she was not able to move in the rental unit until the landlord received approval from the city and fire department that the rental unit was safe for residential living. The tenant stated when the city and fire department inspected the unit on February 10, 2012, it was deemed illegal and she was not allowed to move into the rental unit.

The tenant testified that the landlord did not returned her security deposit or rent for February 2012. The tenant testified the landlord also cashed the March 2012, rent cheque. However, the amount is greater than what was issued. Filed in evidence is the tenant's bank history.

The tenant testified that she did not send her forwarding address in writing as the landlord is avoiding her. However, it was provided in her application for dispute resolution.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, the parties entered into a tenancy agreement for February 2012. On February 10, 2012, the city and fire department declared the rental unit illegal and unsafe to occupy for residential living and tenant was not able to move into the rental unit.

The landlord entered into tenancy agreement with the tenant knowing the rental unit had not been approved. The landlord had no right to take any money from the tenant until such approvals were in place. The landlord further has failed to return any of the money paid by the tenant. In this circumstance it appears the landlord may have deceived the tenant with an opportunity to gain financially.

In this case, the tenant provided her forwarding address to the landlord in her application for dispute resolution. As I have found the landlord was deemed served with her application in accordance with the Act. I also find the landlord has been deemed served with the tenant's forwarding address.

There was no evidence to show that the landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the tenant, to retain a portion of the security deposit.

The tenant paid \$287.50 for the security deposit. 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 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 portion of the security deposit. Therefore, I find that the landlord is not entitled to retain any portion of the security deposit. The landlord has breached section 38 of the Act.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

I must Order, pursuant to section 38 and 67 of the Act, that the landlord pay the tenant the sum of **\$575.00**, comprised of double security deposit (\$287.50).

Further as tenant did not move in the rental unit and the unit was deemed illegal and unfit for residential living. I grant the tenant a monetary order for rent paid in the amount of **\$1,075.00**.

The tenant is given a formal order in the amount of **\$1,650.00** comprised of the above amounts 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.

Conclusion

The tenant is granted a monetary order in the above amount.

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: May 11, 2012.

Residential Tenancy Branch