



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for the return of her security deposit.

The Tenant affirmed that she served the Landlord copies of the hearing documents and her application for dispute resolution on June 8, 2012 (tracking # XXXXXXXXXXXXX) which were delivered to the Landlord on June 12, 2012. The evidence was sent to the Landlord via registered mail (tracking # XXXXXXXXXXXXXXXX) and was delivered July 24, 2012. Based on the submissions of the Tenant I find the Landlord was served and received the hearing documents and evidence in a manner that complies with the Act.

The Tenant appeared at the teleconference hearing however no one appeared on behalf of the Landlord despite him receiving the hearing documents on June 12, 2012.

Issue(s) to be Decided

1. Is the Tenant entitled to a Monetary Order

Background and Evidence

The Tenant submitted that she met with the Landlord on January 13, 2012 and they entered into a verbal agreement for her to rent the unit effective February 15, 2012. During that same meeting she paid the Landlord \$750.00 which included \$500.00 for the security deposit and \$250.00 as the pet deposit. Rent was payable monthly in the amount of \$1,000.00.

The Tenant advised that she returned home and handed in her notice to her current landlord. Her current landlord came to her a few days later and offered to reduce her rent if she stayed so she agreed to stay. The Tenant stated that she called the Landlord January 16, 2012 and informed him that she would not be moving into the rental unit as of February 15, 2012, as she had decided to stay in her current home.

The Tenant then pointed to her evidence which included, among other things, copies of: letters to the Landlord; a cheque from the Landlord for \$250.00; the Landlord's letter of February 24, 2012; registered mail receipts; and copies of advertisements for the unit.

The Tenant stated that she sent the Landlord her forwarding address and requested the return of her deposits on February 09, 2012 by registered mail. She received a partial payment of \$250.00 for the return of the pet deposit on approximately February 25, 2012, and then sent a demand letter for the return of her deposit on April 5, 2012.

The Landlord has failed to return her deposit and she has not been notified of any dispute being filed against her. She is seeking the return of double her security deposit as provided for by the Act.

Analysis

Given the evidence before me, in the absence of any evidence from the Landlord who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Tenant and corroborated by her evidence.

The evidence supports that the Landlord was notified January 16, 2012 that the tenancy would be ending and the Landlord received the Tenant's forwarding address on February 10, 2012. As the Tenant never took possession of the unit the tenancy ended January 16, 2012, pursuant to section 44(1)(d) of the Act.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than February 25, 2012. The Landlord returned the pet deposit however he did not file for dispute resolution and did not return the security deposit.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit.

Based on the foregoing, I find that the Tenant has met the burden of proof and I award her the return of double her security deposit (2 x \$500.00) plus interest of \$0.00 for a total amount of **\$1,000.00**.

Conclusion

The Tenant has been issued a Monetary Order in the amount of **\$1,000.00**. This Order is legally binding and must be served upon the Landlord.

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: August 09, 2012.

Residential Tenancy Branch