



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an application by the tenant for an order for the return of double her security deposit. Both parties participated in the conference call hearing.

Issue to be Decided

Is the tenant entitled to double her security deposit?

Background and Evidence

The facts are not in dispute. The tenancy began on November 1, 2011 at which time a \$500.00 security deposit was paid and ended on or about July 1, 2012. The parties exchanged text messages on May 31 at which time the tenant advised the landlord that she would be ending the fixed term tenancy agreement and in two separate text messages stated that the landlord could keep her damage deposit. The landlord received the tenant's forwarding address in writing on June 25 when the tenant asked the landlord to forward her damage deposit to her new address. On or about July 13, the landlord returned to the tenant \$119.72 of the security deposit.

The tenant testified that she sent the May 31 text messages when she was at work and under stress and that after having sent the texts, she found out that if the landlord was able to re-rent the unit, the tenant may not be liable for loss of income. The tenant testified that once she found out her legal rights, she decided to ask for the return of her deposit.

The landlord took the position that because she received the tenant's written permission to retain the deposit in the two text messages of May 31, she did not believe she needed to make a claim against the deposit. The landlord gave evidence that she returned part of the deposit in an effort to minimize conflict with the tenant.

Analysis

Section 38(4) of the Act provides that a landlord may retain the security deposit if at the end of the tenancy the tenant agrees in writing that she may do so. I find that the text messages sent on May 31 are the modern day equivalent of a written message and I find that the tenant gave the landlord written permission to retain the security deposit. Although the tenant may not have been aware of her legal rights at the time she sent the messages, it was her responsibility to be informed of her rights and although she chose to make a commitment without first being so informed, she does not have the option of changing her position after having sought advice. I find that the landlord acted in reliance on the tenant's representation that she could retain the deposit and that the tenant is therefore stopped from pursuing the return of the security deposit.

I note that the tenant also alleged that the landlord had failed to perform move-in and move-out condition inspections at the beginning and end of the tenancy. While this would have affected the landlord's right to make a claim against the deposit, it does not affect her ability to retain the deposit pursuant to the tenant's written permission as the text messages clearly indicate that the security deposit was to be applied for loss of income.

Conclusion

The tenant's claim is dismissed.

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: October 01, 2012

Residential Tenancy Branch