



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This is an application under the *Residential Tenancy Act* (the “Act”) by the tenant for a monetary order for return of the security deposit.

The tenant, an advocate for the tenant (the “advocate”) and two witnesses for the tenant attended the hearing. The tenant and advocate gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions during the hearing.

As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice”) was considered. The advocate testified that she personally served the landlord with the Notice and evidence on Friday, August 24, 2012 at approximately 5:00 p.m. at the landlord’s residential address. Based on the undisputed testimony of the advocate, I find the landlord was served in accordance with the *Act* on August 24, 2012.

Preliminary Matters

The tenant clarified that she was seeking double her security deposit provided for under the *Act*. The tenant and the advocate confirmed that the tenant was not waiving her rights towards double the security deposit under the *Act*.

The two witnesses of the tenant were not required to provide testimony as the matters they were present to speak to were not deemed relevant to this hearing.

Issue to be Decided

- Is the tenant entitled to the return of double the security deposit pursuant to section 38 of the *Act*?

Background and Evidence

A month to month tenancy began on April 1, 2011. Rent in the amount of \$450.00 was due on the first of each month. A security deposit of \$225.00 was paid by the tenant at the start of the tenancy.

The tenant vacated the rental unit on July 31, 2012. On July 31, 2012, the advocate attended for a move-out inspection with the landlord; however, no move-out condition inspection report was completed. The advocate provided the landlord with the tenant's written forwarding address on July 31, 2012 and was signed by the tenant for the purposes of the return of her security deposit.

The advocate stated that the landlord was upset during the move-out inspection and mentioned a shower rod and cracked window. The tenant testified that there was no shower rod at the start of the tenancy and that the window was already cracked at the start of the tenancy. The landlord did not file an application for dispute resolution claiming towards the security deposit.

The tenant has not received her security deposit back from the landlord to date. The tenant is seeking the return of double her security deposit of \$225.00 for a total of \$450.00.

Analysis

Based on the above and the evidence provided during the hearing, and on a balance of probabilities, I find the following.

The advocate confirmed that she provide the tenant's written forwarding address to the landlord on July 31, 2012. Section 38 of the *Act* states:

Return of security deposit and pet damage deposit

38 (1) 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.

(6) 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.

[emphasis added]

Based on the undisputed testimony of the advocate and tenant, **I find** that the tenant's forwarding address was provided in writing to the landlord on July 31, 2012. **I find** the landlord failed to repay the security deposit or make an application within 15 days of July 31, 2012 which was the date the forwarding address was provided in writing and the end of tenancy date. Therefore, **I find** the tenant is entitled to double her original security deposit of \$225.00 which has not accrued interest to date for a total owing by the landlord of **\$450.00**.

I caution the landlord that a 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. In the matter before me, the landlord did not have any authority under the *Act* to keep any portion of the security deposit

I grant the tenant a monetary order pursuant to section 67 of the *Act*, in the total amount of **\$450.00**. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I find the tenant is entitled to the return of double her security deposit. I grant the tenant a monetary order in the amount of \$450.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 06, 2012

Residential Tenancy Branch