



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD, RPP, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order to recover double the security deposit; for an Order for the landlord to return the tenants personal property; and to recover the filing fee from the landlords for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order to recover double the security deposit?
- Is the tenant entitled to an Order for the landlord to return the tenants personal property?

Background and Evidence

Both parties agree that this tenancy started on October 01, 2009. This was a verbal agreement for the tenant to rent this unit at a monthly rent of \$1,000.00 due on the first day of each month. The tenant paid a security deposit of \$500.00 on October 01, 2012. The tenant moved out of the rental unit on September 01, 2012 but still had possession of the rental unit until September 30, 2012.

The tenant testifies that the landlord served the tenant with a Two Month Notice to End Tenancy on July 03, 2012 for landlord's use of the property. The Notice had an effective date of August 31, 2012 however this was extend to September 30, 2012 as the landlord had not served the Notice by June 30, 2012 as required under the Residential Tenancy Act. Due to this the tenant states she still had possession of the rental unit until the end of September, 2012 and had two radios and some recycling in the unit.

The tenant testifies that she gave the landlord her forwarding address in writing on September 26, 2012 and as the landlord has not returned the security deposit or filed an application to keep the deposit the tenant seeks to recover double the security deposit to the sum of \$1,000.00.

The tenant testifies that during the month of September the landlord entered the rental unit without proper notice and changed the locks. The tenant testifies she was unable to return to the rental unit to remove the reminder of her belongings i.e. two radios and some bags of pop bottles for recycling that the tenant takes back to the recycling depot for cash. The tenant testifies that she was also unable to return to the unit to do a final clean of the unit.

The landlord testifies that she was not aware she had to file an application to keep the tenants security deposit. The landlord agrees she did change the locks to the rental unit as she thought the tenants had moved out and the landlord needed to access the unit so contractors could get in to measure for renovations to the unit.

Analysis

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that the landlords did receive the tenants forwarding address in writing on September 26, 2012 and the tenancy ended on September 30, 2012. As a result, the landlord had until October 15, 2012 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return the security deposit and have not filed an application for Dispute Resolution to keep the deposit. Therefore, I find that the tenant has established a claim for the return of double the security deposit pursuant to section 38(6)(b) of the *Act*.

I further find the landlord changed the locks on the rental unit while the tenant still had possession of the rental unit and in doing so prevented the tenant returning to the unit to collect the last of her belongings namely two radios and bags of recycling. As the landlord has since disposed of the recycling and the tenant has been unable to put a monetary amount on this no further monetary award will be made for the recycling. However, I ORDER the landlord to return the tenants radios at a time and date specified by the tenant. If the landlord fails to do so the tenant is at liberty to file another application to recover the replacement costs for the radios.

I also find the tenant is entitled to recover the **\$50.00** filing fee from the landlords pursuant to section 72(1) of the *Act*. The tenant is entitled to a Monetary Order as follows:

Double the security deposit	\$1,000.00
Filing fee	\$50.00
Total amount due to the tenant	\$1,050.00

Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,050.00**. The order must be served on the respondents 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*.

Dated: November 19, 2012.

Residential Tenancy Branch