



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF, O

Introduction

This hearing was convened by way of conference call in response to the tenant application for a Monetary Order to recover the security and pet deposit; other issues; and to recover the filing fee from the landlords for the cost of this application.

The tenant and landlord attended the conference call hearing and gave sworn testimony. The 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 recover the security deposit?

Background and Evidence

The parties agree that this fixed term tenancy started on August 01, 2012 and ended on September 15, 2012. Rent for this unit was \$1,000.00 per month due on the first day of each month in advance. The tenant paid a security deposit of \$500.00 on July 27, 2012. The parties also agree that the landlord did not complete a move in or a move out condition inspection of the rental unit at the start and end of the tenancy.

The tenant testifies that she gave the landlord her forwarding address in writing on September 15, 2012. The tenant testifies that she did not give the landlord permission to keep all or part of the security deposit. The tenant states that she does not waive her

right to claim double the security deposit as the landlord has not returned it within 15 days of the tenancy ending and receiving her forwarding address.

The landlord agrees that he did receive the tenants forwarding address and acknowledged this by e-mail. The landlord testifies that he did not return the tenants security deposit as the tenant moved out before the end of the fixed term lease and the landlord incurred a loss of rent due to this.

The landlord testifies that he had applied to keep the tenants security deposit by filing an application and a hearing was held on December 20, 2012 however the landlord testifies that he was unable to attend the hearing and his application was dismissed without leave to reapply.

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 landlord did receive the tenants forwarding address in writing on September 15, 2012. As a result, the landlord had until September 30, 2012 to return the tenants security deposit. I find the landlord did not return the security deposit and the landlord has extinguished their right to file a claim against the deposit as the landlord failed to complete either a move in or move out condition inspection of the property with the tenant in accordance with s. 24(2) and 36(2) of the *Act*. 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 also find the tenant is entitled to recover the **\$50.00** filing fee from the landlord pursuant to section 72(1) of the *Act*. The tenant is entitled to a Monetary Order for the sum of **\$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 respondent 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: January 17, 2013

Residential Tenancy Branch

