



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call in repose to the tenant's application for the return of the security deposit and to recover the filing fee paid for this application.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Residential Tenancy Act (Act)*, sent via registered mail on November 04 and November 28, 2012. Mail receipt numbers were provided in the tenant's documentary evidence. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the tenant entitled to recover double the security deposit?

Background and Evidence

The tenant testifies that this tenancy was due to start on October 14, 2012. Rent had been agreed at \$500.00 per month and the tenant paid a security deposit of \$600.00 on October 05, 2012.

The tenant testifies that prior to moving into the unit the tenant kept requesting a tenancy agreement from the landlord. The landlord kept putting off providing the agreement.

The tenant testifies that the day before she was due to move to the rental unit she went to see the landlord and again asked to sign an agreement. However the landlord still had not provided one. The tenant checked the unit again at that time and found it was not ready to move into as there was still furniture in the unit and the unit had not been cleaned. The landlord informed the tenant that the furniture would be removed that night and the landlord would clean the unit.

The tenant testifies that before her belongings were moved in the next day she decided to go back to the unit and check it again and sign a tenancy agreement. However on the tenants arrival at the unit it was still not ready to move into and the landlord had not removed the furniture and had not cleaned the unit. The landlord had not prepared a tenancy agreement for the tenant to sign. The tenant testifies that she informed the landlord that this was not satisfactory and she would not be moving into the unit. The tenant requested the return of her security deposit on that day and the landlord wrote the tenant a cheque for \$600.00.

The tenant testifies that this cheque was returned NSF so the tenant sent the landlord her forwarding address by text message and printed these messages off and sent them to the landlord so the landlord had a copy of the text message and the tenants address. The tenant testifies her address was sent to the landlord on October 20, 2012.

The tenant testifies that she contacted the landlord many times after this date and the landlord kept saying she would bring the cash to the tenants home however the landlord never turned up on any of the arranged dates to pay the security deposit. After 15 days the tenant stopped contacting the landlord and filed her application to recover the security deposit.

The tenant has provided a copy of the receipt for the security deposit; the returned cheque; the text messages and e-mail correspondence between the parties in documentary evidence.

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 tenant could not move into the rental unit as it was not made ready for occupation by the agreed upon move in date. The landlord also failed to comply with s. 13(1) of the *Act* by providing a tenancy agreement in accordance with s. 13(2) of the *Act*. Therefore the landlord should have returned the security deposit paid by the tenant. I find the landlord did receive the tenants forwarding address in writing on October 20, 2012. As a result, the landlord had until November 04, 2012 to return the tenants security deposit or file an application to keep it. I find the landlord did not return the security deposit and has not filed an application to keep it. Therefore, I find that the tenant has established a claim for the return of double the security deposit to the sum of **\$1,200.00** pursuant to section 38(6)(b) of the *Act*.

As the tenant has been successful with this claim I find the tenant is also entitled to recover the **\$50.00** filing fee paid for this application pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$1,250.00**. 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 31, 2013

Residential Tenancy Branch

