



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNSD, FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order for the return of the security deposit retained by the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Is the tenant entitled to a refund of double the security deposit pursuant to section 38 of the Act?

Background and Evidence

The landlord testified that the tenancy began on March 25, 2012 with rent of \$475.00 per month and a security deposit of \$250.00 was paid. The tenancy ended at the end of September 2012.

Forwarding Address

The landlord acknowledged receiving an email from the tenant on August 31, 2012 stating that the tenant was ending the tenancy on September 30, 2012. The landlord included a copy of this message as evidence. The landlord testified that the August 31, 2012 email did not provide the landlord with any forwarding address. The landlord testified she did not have a service address for the tenant until she received the hearing package for this dispute resolution hearing.

The tenant testified that the landlord was provided with a forwarding address as an attachment to the August 31, 2012 email. A copy of this email message was submitted into evidence by both parties and both show that there is an attachment. In the email

body, the tenant requests receipts for rent payments, advises the landlord that she will be moving out on September 30, 2012 and makes reference to an attached a letter containing her formal notice to end the tenancy. The tenant's email also states,

"I hope this email and attached letter suffice to end a tenancy. If you require, I will bring a hard copy of the notice to you tonight."

Near the top of the email the message shows that there is a pdf file is attached to the email with the label, *"Notice to End Tenancy Aug"*.

The landlord stated that she could not find any attachment to the email and therefore did not have the tenant's written forwarding address.

The tenant pointed out that, although she was still living in the rental unit for almost a month after the above email was sent, the landlord did not inform the tenant that she could not retrieve the email attachment, nor did the landlord accept the tenant's offer to provide a hard copy of the email and the attached letter. The tenant's position is that she notified the landlord in writing and waited more than 15 days and is therefore entitled to double the security deposit.

The landlord acknowledged that the deposit was not returned to the tenant after the end of the tenancy. The landlord stated that that this was because the rental unit was not left in a good condition when the tenant left and there were cleaning and repairs costs for which the tenant was responsible.

Analysis :

With respect to the return of the security deposit, I find that section 38 of the Act states that the landlord can retain a security deposit only if the tenant gives written permission at the end of the tenancy. A landlord may also retain the security deposit if the landlord has successfully obtained a monetary order through dispute resolution permitting the landlord to keep the deposit to satisfy a liability or obligation of the tenant.

The Act states that, in order to make a claim against the deposit, the landlord's application for dispute resolution must be filed within 15 days after the end of the tenancy and the date that the forwarding address was received, whichever is later.

Based on the evidence and the testimony, I find that, at the end of the tenancy, the tenant did not give the landlord written permission to keep the deposit. I also find that the landlord did not make an application to obtain an order to keep the deposit within the 15-day deadline to do so.

Section 38(6) provides that, if a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not

make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

With respect to the landlord's own claim for damages and loss, caused by the tenant, I find that I am unable to consider the landlord's claim against the tenant during these proceedings because this hearing was convened to deal with the *tenant's* application under section 38 of the Act, and that is the only matter before me.

The landlord is at liberty to make her own application, if the landlord intends to pursue a claim against the tenant. Information is available at Residential Tenancy Branch for both landlords and tenants.

In the matter before me, however, I find that under section 38 of the Act, the tenant is entitled to a refund of \$550.00 comprised of \$500.00, which is double the security deposit of \$250.00 and the \$50.00 cost of the application.

Based on the evidence presented during these proceedings, I hereby issue a monetary order in favour of the tenant for \$550.00. This order must be served on the respondent landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenant is successful in the application and was granted a monetary order for a refund equivalent to double the security deposit.

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 23, 2013

Residential Tenancy Branch

