



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with a tenant's application for return of double the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the commencement of the hearing the tenant indicated she had not received the landlord's evidence package. The landlord testified that his evidence package was sent to the tenant via email on April 7 or 8, 2013 and via Purolator courier on April 9, 2013. The tenant stated that the emailed evidence was difficult to view as she uses her phone to access email. A search of the Purolator courier tracking number showed that the package has not been delivered because an incorrect or incomplete address was provided. I informed the landlord that he did not send his evidence package in a manner that complies with the service requirements of the Act and that I would not read or accept his documentary evidence. The landlord was informed that he would be permitted the opportunity to provide oral testimony and describe the evidence in support of his position.

Issue(s) to be Decided

Is the tenant entitled to return of double the security deposit?

Background and Evidence

The two year fixed term tenancy commenced August 1, 2012 and the tenant paid a security deposit of \$1,150.00. A move-in inspection report was prepared and a copy given to the tenant. The tenancy ended December 31, 2012 when the tenant vacated the rental unit. The parties participated in a move-out inspection together on December 31, 2012.

The tenant submitted that a move-out inspection report was not prepared by the landlord. The landlord submitted that he was in the process of completing the move-out inspection report but that he retreated into the house when a person known to the tenant was abusive towards him in the driveway and then the landlord forgot to give the tenant a copy of the report at that time. The tenant denied the allegations of abusive behaviour. The landlord testified that he sent a copy of the move-out inspection report to the tenant with the evidence package he prepared for this proceeding.

The tenant testified that she gave the landlord her forwarding address by writing it on a piece of paper and giving it to the landlord during the move-out inspection. The landlord acknowledged that the tenant wrote her forwarding address on the bottom of the tenancy agreement and gave it to him during the move-out inspection.

It was undisputed that the tenant did not give the landlord written authorization to make any deductions from the security deposit.

The landlord was of the position that the tenant owes him more than the security deposit for loss of rent, utilities, carpet cleaning and other minor damage. He had attempted to communicate with the tenant after the tenancy ended via email but she did not respond to his emails. The landlord explained that he did not file an Application for Dispute Resolution seeking authorization to keep the security deposit because he thought the tenant was in agreement with him retaining the security deposit and because he was trying to be being nice to the tenant

Analysis

The purpose of this hearing was to hear the tenant's Application for Dispute Resolution and determine whether the landlord complied with the Act with respect to handling of the security deposit. As the landlord had not filed an Application for Dispute Resolution his submissions that the tenant owes him money were irrelevant and not before me to decide. As the parties were informed during the hearing, the landlord is at liberty to make his own separate Application for Dispute Resolution to claim damages or loss against the tenant.

Section 38 of the Act provides for the return of security deposits. Without the tenant's written consent to make deductions from the security deposit, the landlord was required to comply with section 38(1) of the Act by either returning the security deposit to the tenant or making an Application for Dispute Resolution within 15 days from the later of the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing.

Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit. The requirement to pay double the amount of the deposit is not discretionary and must be administered in accordance with the Act.

Based upon the evidence presented to me, I find that the tenancy ended December 31, 2012 and the tenant provided her forwarding address to the landlord in writing on December 31, 2013. The landlord did not have the tenant's consent to retain the security deposit and did not repay or make an application for dispute resolution within 15 days of the tenancy ending. Nor did the landlord comply with the Act with respect to sending the tenant a copy of the move-out inspection report within the time limit required by the Act. Therefore, the landlord did not have the legal right to retain the security deposit and the landlord must now pay the tenant double the security deposit.

As the tenant was successful in this application, the tenant is also awarded the filing fee she paid for making this application.

In light of the above, I provide the tenant with a Monetary Order in the total amount of \$2,350.00 [(\$1,150.00 x 2) + \$50.00].

The tenant must serve the enclosed Monetary Order upon the landlord and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The tenant was successful in her claim against the landlord and has been provided a Monetary Order in the amount of \$2,350.00 to serve and enforce as necessary.

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: April 17, 2013

Residential Tenancy Branch

