



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing dealt with an application by the tenant for double recovery of the security deposit and further monetary compensation.

The tenant attended the teleconference hearing but the landlord did not. The tenant provided evidence that she served the notice of hearing and application for dispute resolution on the landlord by registered mail on February 15, 2013. I found that the landlord is deemed to have been served with notice of the hearing on February 19, 2013, and I proceeded with the hearing in the absence of the landlord.

Issue(s) to be Decided

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

Is the tenant entitled to further monetary compensation as claimed?

Background and Evidence

The tenant stated that she moved into the basement suite of the landlord's house on June 22, 2012. At that time, the tenant paid her portion of the security deposit, which was \$187.50. On September 30, 2012 the tenant moved upstairs in the house and lived with the landlord and the landlord's partner. The tenant confirmed that the landlord is the owner of the house, and she shared a kitchen and bathroom with the owner once she moved upstairs. The tenant's understanding was that her security deposit transferred to her new tenancy upstairs.

The tenant moved out of the upstairs room on January 12, 2013, pursuant to an eviction notice. The tenant had paid rent to January 22, 2013, so she has claimed recovery of prorated rent in the amount of \$149, as well as double recovery of the security deposit.

The tenant provided her forwarding address in writing in her application for dispute resolution, which the landlord is deemed to have received on February 19, 2013. The landlord has not returned the security deposit or applied for dispute resolution.

Analysis

Based on the tenant's evidence, I find as follows. The tenant paid the landlord a security deposit of \$187.50 when she entered into the tenancy for the basement unit. That tenancy ended on September 30, 2012, when the tenant moved upstairs. Once the tenant moved upstairs and shared a kitchen and bathroom with the owner, her living arrangement became one to which the Residential Tenancy Act does not apply. I therefore do not have jurisdiction to consider the portion of the tenant's application regarding recovery of rent that she paid while she lived upstairs.

Section 38 of the Residential Tenancy Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the security deposit.

In this case, the tenancy for the basement unit ended on September 30, 2012, and the landlord is deemed to have received the tenant's forwarding address in writing on February 19, 2013. The landlord has failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing. I therefore find that the tenant has established a claim for double recovery of the security deposit, in the amount of \$375.

As the tenant's application was partially successful, I find she is entitled to partial recovery of her security deposit, in the amount of \$25.

Conclusion

I decline jurisdiction over the tenant's claim for recovery of rent while she lived in the upstairs room.

I grant the tenant an order under section 67 for the balance due of \$400. This order may be filed in the Small Claims Court and enforced 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: May 16, 2013

Residential Tenancy Branch

