

Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order. The hearing was conducted via teleconference and was attended by the tenant, her translator and the landlord.

During the hearing I requested permission from the parties to review a previous decision dated February 19, 2013 because that decision had specific relevance to the tenant's Application. The parties agreed.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenancy began on November 1, 2011 for the monthly rent of \$2,585.00 due on the 1st of each month with a security deposit of \$1,292.50 paid. The parties did not agree on whether or not it was a fixed term tenancy or a month to month tenancy.

In the above noted previous decision the landlord was ordered to return the tenant's security deposit or make an Application for Dispute Resolution seeking to retain the deposit within 15 days of the date of the decision.

The landlord testified that she had applied for Review Consideration of that decision but did not receive a copy of any decision regarding that application. The landlord stated

Page: 2

she thought that today's hearing was to be her opportunity to discuss damage to the rental unit that she is seeking compensation for.

The landlord acknowledged that she did submit an Application for Dispute Resolution and has a hearing with the tenant on September 3, 2013. She states that Application is seeking compensation for unpaid rent and now that she understands that this hearing is not her opportunity to seek compensation for damage to the rental unit she will consider amending her Application.

The landlord acknowledges that she did not return the deposit or file an Application for Dispute Resolution seeking to retain the deposit, although she did believe she was doing so when she filed her Application for Review Consideration for a new hearing and to have the decision of February 19, 2013 suspended.

Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

As per the decision of February 19, 2013 the Arbitrator accepted that the landlord had received the tenant's forwarding address as a result of the Application for Dispute Resolution that resulted in that decision, however the Arbitrator still allowed the landlord 15 days from the date of the decision to comply with the requirements of Section 38(1).

As the landlord failed to return the deposit and has not yet filed an Application for Dispute Resolution seeking to claim the deposit I find the landlord has failed to comply with Section 38(1) and the tenant is entitled to double the amount of the security deposit, pursuant to Section 38(6).

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$2,635.00** comprised of \$2,585.00 rent owed and the \$50.00 fee paid by the tenant for this application.

Page: 3

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: July 25, 2013

Residential Tenancy Branch