



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This is an application filed by the Tenant for a monetary order for money owed or compensation for damage or loss, for the return of the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. The Landlord has confirmed receipt of the Tenant's evidence and that she did not file any documentary evidence for this hearing. I am satisfied based upon the direct testimony of both parties that each party has been properly served with the notice of hearing package and the submitted documentary evidence.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order?

Background and Evidence

Both parties agreed that the tenancy began on December 1, 2012 and that there was no signed tenancy agreement. Both parties agreed that the monthly rent was \$2,000.00 and that a \$1,000.00 security deposit was paid.

The Tenant seeks a monetary order for \$5,000.00. This consists of \$1,000.00 for the return of the security deposit, \$2,000.00 for recover of the prepaid last months rent and \$2,000.00 for the return of April 2013 rent because the tenancy ending at the end of March 2013.

The Tenant states that the tenancy ended on March 20, 2013 when she was locked out. The Landlord disputes this stating that the Tenant gave written notice to vacate the rental unit. The Tenant disputes this. The Landlord states that she has the written

notice, but did not submit it as evidence. The Tenant has submitted a copy of a receipt dated November 5, 2012 that states that December rent of \$2,000.00, last months rent of \$2,000.00 and a \$1,000.00 security deposit was paid. The Landlord has acknowledged this receipt and stated that she is willing to return the \$1,000.00 security deposit and the \$2,000.00 last months rent prepaid. The Landlord disputes returning the \$2,000.00 April 2013 rent. The Tenant also relies on a submitted copy of an email dated April 9, 2013 from the Landlord to the Tenant, which states, "no, you are not welcome on my property as the constable told you...I'd like to pay you the money back for this month right now Slisia but I don't have it. That doesn't equal refusing to pay..but ok..if that is your victim story so it is..."

Analysis

I prefer the evidence of the Tenant over that of the Landlord. Both parties have acknowledged that the Tenant moved out at the end of March 2013 and that the Tenant was no longer residing at the rental. The Landlord has conceded that the \$1,000.00 security deposit and the \$2,000.00 prepaid last months rent should be returned. Based upon the direct testimony of both parties and the submitted documentary evidence, I find that the Tenant is entitled to the return of the \$2,000.00 for April 2013 rent.

Section 38 of the Residential Tenancy Act states,

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [*tenant fails to participate in start of tenancy inspection*] or 36 (1) [*tenant fails to participate in end of tenancy inspection*].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) *[service of documents]* or give the deposit personally to the tenant.

I find that the Landlord failed to return the \$1,000.00 security deposit within the allowed 15 days after the end of the tenancy or when the forwarding address in writing was received. The Landlord also failed to apply for dispute resolution to keep the deposit. Pursuant to section 38 (6) the Landlord must pay the tenant double the security deposit.

The Tenant has established a total monetary claim for \$6,000.00. This consists of the return of the \$2,000.00 prepaid last months rent, \$2,000.00 for the return of April 2013 rent and \$2,000.00 which is the return of double the security deposit. The Tenant is also entitled to the recovery of the \$50.00 filing fee. I grant a monetary order under section 67 of \$6,050.00 to the Tenant. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Tenant is granted a monetary order for \$6,050.00.

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 11, 2013

Residential Tenancy Branch