



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Preliminary Issues

Upon review of the Tenant's application for dispute resolution I find the Tenant clearly stated her intent to claim for the return of double her security deposit and to recover the cost of the filing fee in the details of dispute listed on the application form.

Based on the aforementioned I find the Tenant made a clerical error in not selecting the box for the return of her security deposit. Therefore I amend the application to include a request for the return of her security deposit, pursuant to section 64(3)(c) of the Act.

The Tenant testified that she recently changed her name back to her maiden name so some of the documents had her married name while others had her maiden name. The Tenant agreed to have both names listed in the style of cause for this decision.

At the outset of the August 27, 2013 hearing the Landlord argued that on May 25, 2013, the Tenant personally served her with only a copy of the notice of dispute resolution hearing. She was not served a copy of the application or evidence from the Tenant and therefore she did not submit evidence in her defence. The parties agreed to adjourn the hearing and reconvene at a future date to allow service of the application and evidence.

At the outset of the October 10, 2013 reconvened hearing the Tenant argued that she did not receive copies of the Landlord's evidence. The Landlord testified that she posted an envelope to the door at the address provided by the Tenant and she read out the address during the hearing. The Tenant alleged that it was an incorrect address because there are many different suites at this address and it should have included suite "B" in the address.

I informed the Tenant that her application for dispute resolution did not include suite "B" for her address, and also she received the envelope that had been mailed to her with the security deposit refund which was sent to the exact forwarding address she

provided the Landlord, which did not include a suite "B". Accordingly, I questioned the credibility of the Tenant's testimony and I found that she was sufficiently served with copies of the Landlord's evidence.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on May 16, 2013, by the Tenant to obtain a Monetary Order for the return of double her security deposit and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing on August 27, 2013, and agreed to adjourn the hearing. The hearing was reconvened to October 10, 2013, and each party gave affirmed testimony.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Should the Tenant be granted a Monetary Order?

Background and Evidence

The parties confirmed that they entered into a fixed term lease that began on November 1, 2012, and was set to end one year later. Rent was payable on the first of each month in the amount of \$750.00 and on October 13, 2012 the Tenant paid \$375.00 as the security deposit. Sometime in mid February 2013, the parties mutually agreed to end the tenancy effective April 30, 2013, if the Landlord was able to find replacement tenants. The Landlord was successful in finding new tenants and the Tenant moved out by April 30, 2013.

The Landlord testified that at 8:40 a.m. on April 30, 2013, she received a text message from the Tenant stating she was finished cleaning and had moved out. The Tenant indicated she was heading off to work. When the Landlord attended the unit she found the property vacant and the keys were left inside with a note listing the Tenant's forwarding address.

The Landlord argued that she was negotiating with the Tenant, through text messages, about how much of the deposit would be returned. An agreement that the Landlord would return \$350.00 of the deposit was not reached until May 7, 2013, as supported by the text messages in evidence. The Landlord stated that she wrote the cheque the next day and placed it in the mail.

The Tenant testified that she received the cheque on May 23, 2013, and she refused to cash it because she felt she was entitled to double the deposit. She argued that because she did not receive the cheque within fifteen days of providing her forwarding address then she was entitled to double.

Analysis

After careful consideration of the evidence before me, and on a balance of probabilities, I find that the Tenant has provided insufficient evidence to prove the Landlord breached the Act in a manner that would require the Landlord to pay the Tenant double her security deposit.

I make this finding in part because by her own admission, the Tenant failed to provide the Landlord with a proper forwarding address. I note that she even provided an incorrect address on her application for dispute resolution. Furthermore, she was involved in negotiations about the amount of deposit being returned up to May 7, 2013. Accordingly, I hereby dismiss the Tenant's claim, without leave to reapply.

The Tenant has not been successful, therefore, I decline to award recovery of the filing fee.

The Tenant is still holding the original cheque for \$350.00 that was issued to her on May 8, 2013. The Tenant is at liberty to cash that cheque; however, in the event that the bank does not accept the cheque, the Tenant will be required to serve the Landlord the enclosed monetary order to have her issue a replacement cheque forthwith.

Conclusion

The Tenant's application for double the security deposit is HEREBY DISMISSED, without leave to reapply.

The Tenant has been issued a Monetary Order in the amount of **\$350.00**. If the May 8, 2013 cheque does not clear the bank, the Tenant will be required to serve this Order upon the Landlord. If the May 8, 2013, cheque does clear the bank the enclosed Order will be void and of no force or effect.

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: October 10, 2013

Residential Tenancy Branch

