



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW DECISION

Dispute Codes:

MNSD and FF

Introduction

This matter was the subject of a dispute resolution hearing on July 09, 2013, in which an Arbitrator granted the Applicant's application for a monetary Order.

The Respondent filed an Application for Review Consideration and another Arbitrator determined that a new hearing should be convened.

This hearing was convened to consider the merit of the Applicant's Application for Dispute Resolution, in which the Applicant applied for the return of the security deposit and to recover the fee for filing this Application.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Respondent stated that the review package was served to the Applicant, via registered mail, on August 14, 2013. The Applicant acknowledged receipt of the package and it was accepted as evidence for these proceedings.

The Applicant stated that the Applicant's Application for Dispute Resolution, the Notice of Hearing for the hearing on July 09, 2013, and evidence the Applicant wishes to rely upon as evidence were sent to the Respondent, via registered mail, on April 15, 2013. The Respondent stated that she did not receive these documents, which was the basis for her Application for Review Consideration.

In her Review Consideration Decision, the arbitrator directed the Applicant to serve the Respondent with a copy of the Application for Dispute Resolution and all evidence submitted for the original hearing. Although this was very clearly explained in the Review Consideration Decision, the Applicant stated that she was unaware that she needed to reserve this evidence to the Respondent.

The Respondent stated that she did understand that this hearing related to the return of the security deposit and that she is willing to proceed with the hearing today, even though she has not been served with the Application for Dispute Resolution.

The Applicant stated that she is also willing to proceed with the hearing on this date without her documents being accepted as evidence, providing she has the right to apply for an adjournment if it becomes necessary to view one of her documents. This hearing was concluded without the Applicant requesting an adjournment.

Issue(s) to be Decided

Is the Tenant entitled to the return of the security deposit?

Preliminary Matter

Before considering the merits of the Applicant's Application for Dispute Resolution I must determine whether this rental accommodation is governed by the *Act*. The legislation does not confer authority to consider disputes between all types of relationships between parties. Only relationships between landlords and tenants can be determined under the *Act*.

Section 4(c) of the *Act* stipulates that the *Act* does not apply to living accommodations in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.

The Respondent stated that she is the owner of this residential complex. The Tenant does not dispute ownership of the complex.

The Respondent and the Applicant agree that the Applicant lived in the lower part of the rental unit and the Respondent primarily lived in the upper part of the rental unit, although the levels were not separated by a locking door.

The Respondent and the Applicant agree that there was a kitchen on the lower level, which the Respondent did not use and that there was a kitchen on the upper level, which the Applicant did not use. On the basis of this undisputed evidence, I find that the parties did not share kitchen facilities.

The Respondent and the Applicant agree that there was a washer and a dryer in the lower bathroom, which was used by both parties. Although the washer and dryer were located in the lower bathroom, I cannot conclude that using those appliances constitute sharing a bathroom. In my view, when the Applicant was using this multipurpose room for doing laundry, it would be appropriately considered a laundry room.

The Respondent stated that on rare occasions she would shower in the bathroom on the lower level and that she showered in that bathroom on at least one occasion while the Applicant was living there. The Applicant stated that the Landlord's guests occasionally used the bathroom on the lower level but she was not aware that the Respondent used the bathroom to shower and she was not told that the Respondent would shower in the bathroom.

If the term "share", as in how a child shares a toy, I would conclude that the *Act* does not apply to this tenancy because on a rare occasion the Respondent uses the bathroom typically used by the Applicant. I do not find that this is the intent of the legislation and in these circumstances, I find that the *Act* should be interpreted more liberally.

I do not believe that the intent of the legislation was to exclude living accommodations where the bathroom is only rarely used as a bathroom by the owner of the rental unit. In my view, when there is one bathroom in the home that is clearly designated for the primary use of the owner and one that is clearly designated for the primary use of other occupant(s), the *Act* should apply. I find that to be particularly true when the occupant is not aware that the owner is using the bathroom to shower, as is alleged by the Applicant.

I therefore assume jurisdiction in this particular matter.

Background and Evidence

The Applicant and the Respondent agree that this tenancy began in September of 2012; that it ended on December 31, 2012; that the Applicant agreed to pay monthly rent of \$450.00 by the first day of each month; that the Applicant paid a security deposit of \$225.00; that the Applicant did not authorize the Respondent to retain the security deposit; that the Respondent did not file an Application for Dispute Resolution claiming against the security deposit; that the Respondent sent the Applicant a cheque, in the amount of \$67.23, in January of 2013; that this cheque has not been cashed; and that the cheque is now stale dated and cannot be cashed.

The Applicant stated that she provided the Respondent with her forwarding address, via email, on December 31, 2012. The Respondent stated that she received the forwarding address on January 04, 2013 or January 05, 2013.

Analysis

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. I find that the Respondent failed to comply with section 38(1) of the *Act*, as the Respondent has not repaid the full amount of the security deposit or filed an Application

for Dispute Resolution.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1), the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Respondent did not comply with section 38(1) of the *Act*, I find that the Respondent must pay the Applicant double the security deposit that was paid, which equals \$450.00.

I find that the Application for Dispute Resolution has merit and that the Applicant is entitled to recover the fee for filing the Application, which is \$50.00.

Conclusion

As I have found that the Tenant has established a monetary claim of \$500.00, which is the same finding the arbitrator reached on July 09, 2013, I can find no reason to set aside or vary the decision and Order of that date. The monetary Order, dated July 09, 2013, remains in full force and 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: September 13, 2013

Residential Tenancy Branch

