



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the tenant for the return of all or part of the pet damage or security deposit and to recover the filing fee from the landlord for the cost of this application.

The tenant filed this application and served the landlord by registered mail with a copy of the application and Notice of Hearing documents to the rental suite address on the tenant's application. The tenant served it to this address as this was the address which the landlord intended to occupy as a result of the notice to end tenancy for landlord use of property which was given to the tenant by the landlord. The tenant provided the Canada Post tracking number and a bank statement evidencing the payment made for serving the document using this method. Section 90 of the Residential Tenancy Act (referred to as the *Act*) states that a document served in this way is deemed to have been received 5 days after such mailing. As a result, I find that the landlord was served the hearing documents as required by the *Act*.

The tenant attended the hearing to give affirmed testimony and was permitted under Section 11.5 of the Rules of Procedure, to provide a copy of the forwarding address supplied to the landlord and a bank statement. There was no appearance for the landlord or any evidence submitted in advance of the hearing, despite being served notice of this hearing in accordance with the *Act*.

All of the testimony and documentary evidence submitted by the tenant was carefully considered in this decision.

Issue(s) to be Decided

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

Background and Evidence

The tenant testified that the tenancy began in July, 2010 on a month-to-month basis. Rent was payable by the tenant in the amount of \$1,300.00 per month and the tenant paid a security deposit in the amount of \$650.00 before the tenancy began which the landlord still retains and has failed to return back to the tenant.

The tenant testified that the rental suite was sold to a new landlord, the landlord named in this application, who shortly after taking over the tenancy indicated that he wanted to move into the rental suite because he wanted to live there and have a better 'man cave'. The tenant testified that the landlord verbally asked her to leave the unit three times, in January, March and May, 2013. Although, the tenant did not receive any formal notice from the landlord with regards to ending the tenancy for landlord's use of property, the tenant accepted the verbal notice of the landlord, deducted her June, 2013 rent payment and left the tenancy on July 1, 2013. The tenant testified that the landlord was not able to receive the keys until the second day of July, 2013 even though she was ready to vacate the tenancy at the end of June, 2013. As a result, the tenant only made a claim for \$563.34 because she deducted two days worth of rent for which she thought she was responsible for.

The tenant testified that she provided the landlord with a forwarding address on August 1, 2013 in writing. A copy of the typed letter dated August 1, 2013 to the landlord detailing the forwarding address was provided as evidence for this hearing and the tenant testified that she served this to the landlord by mail. The landlord provided a copy of her bank statement showing a payment made on August 1, 2013 which comprised partly of payment for mailing of the letter containing the tenant's forwarding address.

Analysis

Section 38(1) of the *Residential Tenancy Act* states that, within 15 days of the landlord receiving the tenant's forwarding address in writing after the tenancy ends, the landlord must repay the security deposit or make an application to claim against it.

The tenant testified that the landlord and tenant both agreed to end the tenancy at the end of June, 2013 under the provision of a notice to end tenancy for landlord's use of the property. Whilst no written notice was provided to the tenant to end the tenancy, the tenant accepted the verbal notice, obtained her compensation payable by the landlord to the tenant under the notice. As a result, and in the absence of the landlord's testimony or evidence to prove otherwise, I accept that the tenancy ended in accordance with the *Act*.

I also find that in the absence of any evidence from the landlord to dispute the tenant's testimony, I am satisfied that the tenant provided the landlord with a forwarding address in writing as required by the *Act*. I am also satisfied that the tenant served this to the landlord at the rental suite address as this was the address that had been provided to the tenant as a place where the landlord intended to reside based on the verbal notice to end tenancy for landlord's use of the property.

As a result the landlord was required to repay the security deposit or make an application to claim against it within 15 days of receiving it which the landlord failed to do.

Section 38(6) of the *Act* states that if a landlord does not comply with the above, the landlord must pay the tenant double the amount of the security deposit. Therefore the tenant is entitled to \$1,300.00 monetary compensation. As the tenant has been successful in this matter, I also award the tenant the filing fee of \$50.00 for the cost of this application.

Conclusion

For the reasons set out above, I grant a monetary order in the amount of **\$1,350.00** in favour of the tenant pursuant to Section 67 of the *Residential Tenancy Act*. This order must be served on the landlord and may then be filed in the Provincial Court (Small Claims) 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: November 14, 2013

Residential Tenancy Branch

