



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNSD

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord by mailing, by registered mail to where the landlord resides on September 21, 2013. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to the return of double the security deposit/pet deposit?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on November 1, 2012 and end on May 31, 2013 and become month to month after that. The rent was \$2650 per month payable on first day of each month. The tenant(s) paid a security deposit of \$1325 at the start of the tenancy.

The tenancy ended on August 30, 2013.

The tenant testified she provided the landlord with his/her their forwarding address in writing on that date. The landlord denies receiving it at that time. The tenant was not able to provide proof that she gave her forwarding address in writing on August 30, 2013. However, the parties agreed the tenant provided the landlord with her forwarding address in writing on September 14, 2013. The representative of the landlord acknowledged reading the e-mail on September 15, 2013.

The landlord mailed a cheque in the sum of \$496.40 on September 24, 2013.

Law

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

Analysis

The tenants paid a security deposit of \$1325 at the start of the tenancy. I determined the tenancy ended on August 30, 2013. I further determined the tenant failed to prove that she provided her forwarding address in writing on August 30, 2013. However, I find that the tenant provided the landlord with their forwarding address in writing on September 15, 2013.

The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenants and the landlord failed

to file an Application for Dispute Resolution within the 15 days from the later of the end of tenancy or the date the landlord receives the tenants' forwarding address in writing.

The landlord provided the tenants with a cheque in the sum of \$496.40 within 15 days of September 15, 2013. The landlord represented that cheque is still valid. This decision is based on the representation the cheque is valid and the tenants will be cashing it. I determined this amount should be deducted from the security deposit for the purpose of determining the amount to be doubled ($\$1325 - \$496.40 = \$828.60$). As a result I determined the tenants have established a claim against the landlord for double the security deposit held by the landlord or the sum of \$1657.20 ($\$828.60 \times 2 = \1657.20).

In addition the landlord acknowledged their bank inadvertently cashed the rent cheque for September that lead to a \$45 NSF charge against the tenant. The landlords acknowledged responsibility for this charge.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenants the sum of \$1702.20 plus the sum of \$50 in respect of the filing fee for a total of \$1752.20.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

The landlord stated he has claims against the tenant for the cost of cleaning and damage. The landlord must first file an Application for Dispute Resolution in order for those claims to be determined.

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 01, 2013

Residential Tenancy Branch

