



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Homelife Glenayre Realty Co. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This was an application by the tenant for a monetary order for the return of her security deposit. The hearing was conducted by conference call. The tenant and the landlord's representative participated in the hearing.

Issue(s) to be Decided

Is the tenant entitled to the return of her security deposit including double the amount?

Background and Evidence

The rental unit is a house in Mission. I was not provided with a copy of the tenancy agreement, but the tenant and the landlord's representative both agreed that there was a written tenancy agreement. The tenant and her daughter paid a \$500.00 security deposit on or about July 2011. The deposit was paid with respect to an earlier tenancy, but the tenant moved to a new rental unit, also rented from the landlord and the \$500.00 deposit was transferred to the new tenancy.

In May, 2013 the tenant gave the landlord a written notice ending the tenancy effective at the end of June. The written notice included the tenant's forwarding address. The landlord's representative acknowledged that she received the written notice with the tenant's forwarding address.

The tenant testified that she moved out of the rental unit on June 27th. There was no condition inspection of the rental unit at the end of the tenancy although the tenant offered to participate. The tenant said that she requested the return of her security deposit but the landlord's representative refused to return it because, according to the landlord, the tenant had failed to pay an amount for rent in the month of September or

October, 2012. The tenant testified that she paid sum in cash by putting it in the back door of the landlord's office, as instructed by the landlord's representative.

The landlord's representative testified that the tenant did not pay \$400.00 in rent for one month. She said that the tenant's statement that she paid rent in cash was untrue. The landlord's representative said that she would not return the tenant's security deposit until she paid the sum of \$400.00 that was owed for rent. The landlord's representative said that she intended to file an application for dispute resolution to claim the unpaid rent, but she has not yet done so.

Analysis

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit. The fact that the landlord claimed that the tenant failed to pay the full amount of the rent in a previous month does not alter the landlord's obligations to deal with the security deposit in accordance with the provisions of the *Residential Tenancy Act*. The tenant does not agree that she owes rent for a previous month and the landlord will therefore have to commence its own application for dispute resolution if it intends to pursue a claim for unpaid rent.

I am satisfied that the tenant provided the landlord with her forwarding address in writing, and based upon the acknowledgement of the landlord at the hearing I find that the tenant served the landlord with documents notifying the landlord of this application as required by the *Act*.

Conclusion

The tenants' security deposit was not refunded within 15 days as required by section 38(1) of the *Residential Tenancy Act* and the doubling provision of section 38(6) therefore applies. I grant the tenant's application and award her the sum of \$1,000.00 and I grant the tenant a monetary order against the landlord in the said amount. This order may be registered in the Small Claims Court and enforced as an order of that

Court. The tenant did not pay a filing fee for her application and I do not award any amount for a filing fee.

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 06, 2013

Residential Tenancy Branch

