



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes mndc, mnsd, ff

Introduction

The tenant applied for a monetary order of \$5,001.00 from the landlord, for the return of the tenant's security deposit, damage to personal property and physical injury, stress and anxiety, and problems with access at move in and move out. At the hearing, the tenant advised that she now claims only the return of her security deposit, doubled, and the recovery of her filing fee.

Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit, doubled?

Is the tenant entitled to recovery of her filing fee?

Background and Evidence

This tenancy began on or about May 1, 2010 and ended on or about October 3, 2011. The tenant paid a security deposit of \$625.00, by way of \$100.00 cash on April 30, 2010, and a cheque for the balance dated May 1, 2010. None of the deposit has been returned.

The tenant testified that there was no written condition inspection report prepared by the landlord at the start of the tenancy. She gave the landlord written notice to end the tenancy on August 31, 2011. The landlord did not schedule a move-out inspection, and did not prepare a written condition inspection report at the end of the tenancy. The landlord was provided with the tenants' forwarding address in writing at the end of the tenancy, although the tenant cannot find a copy of the actual document. The forwarding address was again provided in writing in a letter handed to the landlord on December 12, 2011. There were numerous conversations after that with the landlord in which the landlord refused to return the deposit.

The landlord acknowledges that there was no condition inspection report prepared either at the start or the end of the tenancy. She cannot recall receiving either letter from the tenant that had a forwarding address. She acknowledges there were discussions after the tenancy ended, about the security deposit. She testified the tenant knew that

she was retaining the deposit in lieu of unpaid rent by the tenant. For many months the tenant failed to pay the full rent, because of a variety of complaints. The withheld rent is about double the amount of the deposit.

Analysis

I accept that this tenancy ended October 3, 2011, when the tenant had fully returned possession of the premises to the landlord. This date is important, as any claim filed regarding this tenancy must be filed within 2 years of the ending of the tenancy. The tenant's claim was filed September 18, 2013, which I accept lies within the 2 year limitation period for filing claims, specified in section 96(1) of the Residential Tenancy Act.

The tenant is no longer proceeding with claims for damage to personal property and physical injury, stress and anxiety, and problems with access at move in and move out, and these claims are all dismissed.

I note that the landlord has filed no claim, and therefore I have no authority in this hearing to resolve her dispute that the tenant has not paid all rent owed.

I accept the tenant's testimony, which is supported by a copy of her letter of December 12, 2011, that she personally handed the landlord an envelope containing this letter on December 12, 2011, which letter included her written forwarding address. I also accept the landlord's testimony that she cannot recall receiving this letter (or receiving any prior written notice with the forwarding address), but I note that her failing to recall receipt does not necessarily mean she did not in fact get it. I further note that a forwarding address need not be the tenant's actual residential address, it is sufficient that it be an address to which mail can be given.

I find that the tenant has proven on a balance of probabilities that she provided the landlord with her forward address in writing, on December 12, 2011.

Section 38 of the Residential Tenancy Act governs the dispute at hand regarding the security deposit. Under section 38(1) of the Residential Tenancy Act, a landlord has an obligation to either file a claim to retain the tenant's deposit, or to return a tenant's security deposit, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address, whichever is later. As noted above, the landlord has filed no claim as against the tenant. The 15 day period ended December 27, 2011, but the deposit was never returned. Furthermore, the landlord failed to complete a Condition Inspection Report at the start or the end of the tenancy, thereby extinguishing the landlord's right to retain the tenant's security deposit (see section 38(5)).

As the landlord failed to comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit (as required under section 38(6)). There is no evidence before me that any of the exceptions to the landlord's obligations under section 38(1) apply in this case. There is no evidence that any statutory grounds

extinguish the tenant's right to claim the deposit. I find the tenant entitled to double the deposit, which is \$1,250.00. No interest has accrued.

A claim for less than \$5,000 requires a filing fee of \$50.00, and given the tenant's election not to proceed with the balance of her claim, I find no basis upon which to hold the landlord liable for a higher filing fee. The tenant is therefore awarded recovery of half the filing fee, or \$50.00.

Conclusion

The tenant is entitled to double the deposit, and recovery of a filing fee of \$50.00. The total the landlord must pay to the tenant is \$1,300.00.

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: December 16, 2013

Residential Tenancy Branch

