



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This is an application for a Monetary Order for \$2600.00 and a request for recovery of the \$50.00 filing fee.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the applicant the opportunity to testify at the hearing.

The applicant provided a sworn affidavit from a process server that states that the respondent was served with notice of the hearing by personal service on October 18, 2013, however the respondent did not join the conference call that was set up for the hearing.

All testimony was taken under affirmation.

Issue(s) to be Decided

It's the applicant entitled to a Monetary Order for \$2600.00?

Background and Evidence

The applicant testified that:

- This tenancy began on November 1, 2012 with a monthly rent of \$1300.00 and a security deposit of \$650.00 was paid prior to the beginning of a tenancy.
- The tenancy agreement was a fixed term for two years with an expiry date of November 1, 2014.

- On June 20, 2013 she received a phone call from the landlord stating that he needed to move into the house and giving her two months notice to vacate.
- She was able to find another place sooner and therefore vacated on July 2, 2013.
- No actual written notice to end tenancy was ever given to her, however since the landlord wanted to move into the rental unit I believe I should get the equivalent of one month rent as compensation required on a notice is given for landlord use.
- The landlord has also failed to return my security deposit even though he stated he would, and has received a forwarding address in writing on two occasions, the first was sent by text on July 9, 2013, and the second was personally served to him on October 18, 2013.
- I'm therefore requesting an Order for return of double my security deposit as required under the Residential Tenancy Act.
- Therefore the total amount I'm requesting is \$2600.00, plus the filing fee of \$50.00 for a total Order of \$2650.00.

Analysis

The tenant is only entitled to compensation if the landlord has served the tenant with a Section 49 Notice to End Tenancy for landlord use, however in this case no Notice to End Tenancy was ever served on the tenant and therefore the tenant was not required to vacate.

If the tenant chooses to vacate even though they have not been served with a valid Notice to End Tenancy, the tenant does not have the right to compensation.

I therefore will not allow the requested \$1300.00 compensation.

As far as the security deposit is concerned, the Residential Tenancy Act states that, if the landlord does not either return the security deposit, get the tenants written permission to keep all or part of the security deposit, or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

The landlord has not returned the tenants security deposit or applied for dispute resolution to keep any or all of tenant's security deposit and the time limit in which to apply is now past.

This tenancy ended on July 2, 2013 and there is sworn confirmation that the landlord had a forwarding address in writing by October 18, 2013, and there is no evidence to show that the tenant's right to return of the deposit has been extinguished.

Therefore the landlord must pay double the amount of the security deposit to the tenant.

The tenant paid a deposit of \$650.00, and therefore the landlord must pay \$1300.00.

And also allow the request for recovery of the \$50.00 filing fee.

Conclusion

I have issued an Order for the respondent to pay \$1350.00 to the applicant.

The remainder of this claim is dismissed without leave to reapply.

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: January 09, 2014

Residential Tenancy Branch

