



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and the landlord.

Prior to the hearing the landlord submitted a request for a face to face hearing due to a hearing problem. At the outset of the hearing the landlord testified that with impairment in one ear and sometimes her other ear has a ringing in it, she might have difficulty hearing.

The landlord testified that at the start of the hearing she was fine and could hear things well. I instructed the landlord that should she have any difficulty to let me know and we would deal with it if it arose. The landlord never identified a problem during the hearing.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on June 20, 2001 for a month to month tenancy beginning on July 1, 2001 for a monthly rent of \$1,150.00 due on the 1st of each month with a security deposit of \$575.00 paid on June 20, 2001. The tenancy ended on July 28, 2013.

The tenant submits that she provided the landlord with her forwarding address on August 20 or 21, 2013 by regular mail. The landlord confirms receipt of the forwarding address in early September 2013 based on a letter dated August 28, 2013 from the tenant.

The landlord submits that she had called the tenant three times after the end of the tenancy and that the tenant did not return her calls. The landlord submits that despite some damage to the rental unit she had intended to return the deposit and she wanted to meet with the tenant and provided her with a full refund.

The tenant submits that other than a phone call in late September 2013 at work, where she was not able to speak with the landlord, in which the landlord stated she had a cheque for the tenant the landlord had not responded or provided the tenant with her security deposit.

Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

Based on the testimony of both parties I find the landlord received the tenant's forwarding address on September 2, 2013 and as such the landlord had until September 17, 2013 to either return the deposit or file an Application for Dispute Resolution seeking to retain the deposit.

As the landlord has not yet filed an Application for Dispute Resolution seeking to retain the deposit I find the landlord has failed to comply with her obligations under Section 38(1) and as such the tenant is entitled to return of double the original amount of the security deposit plus interest on the amount of the original deposit.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$1,229.91** comprised of \$1,150.00 double the amount of the deposit; \$29.91 interest owed and the \$50.00 fee paid by the tenant for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: February 04, 2014

Residential Tenancy Branch

