



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MIDWEST PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the tenant for the return of all or part of the pet damage or security deposit and for money owed or compensation for damage or loss under the *Residential Tenancy Act* (referred to as the “Act”), regulation or tenancy agreement. The tenant also applied to recover the filing fee from the landlord for the cost of this application.

An agent for the landlord and the tenant appeared for the hearing and provided affirmed testimony. The landlord’s agent confirmed receipt of the hearing documents which had been personally served by the tenant to the landlord. Based on this, I find that the tenant served the Notice of Hearing documents to the landlord in accordance with section 89(1) (b) of the Act.

The tenant submitted documentary evidence prior to the hearing which the tenant testified had also been personally served to the landlord. However, the landlord denied receipt of the tenant’s evidence. In the absence of any supporting evidence by the tenant to prove that the evidence had been served to the landlord, I have not considered the tenant’s documentary evidence in my decision. The landlord did not provide any documentary evidence prior to this hearing.

Issue(s) to be Decided

- Is the tenant entitled to double the amount of the security and pet damage deposit?

Background and Evidence

Both parties agreed that this tenancy started on January 7, 2013 and was for a fixed term of one year. Rent was payable by the tenant to the landlord in the amount of \$1,139.00 on the first day of each month. The tenant paid a \$500.00 security deposit

before the tenancy started and a \$500.00 pet damage deposit which was paid in increments during the tenancy. The landlord's agent confirmed that the landlord still retains the tenant's deposits.

The tenant testified that the tenancy ended because the landlord had issued her with a notice to end tenancy on September 3, 2013 for unpaid rent or utilities. The tenant testified that as a result she moved out on September 19, 2013. On October 7, 2013 the tenant called the landlord to obtain their business fax number and then sent the landlord a fax with her forwarding address. The landlord's agent confirmed receipt of the tenant's forwarding address by fax but could not provide the date it had been received by the landlord.

The landlord's agent testified that the tenant did not leave until September 21, 2013 and the security and pet damage deposit was not returned to the tenant because she had not paid rent, there were damages to the rental suite and there were charges for late rent and breaking a fixed term tenancy. The landlord's agent testified that she was a new property manager and had just taken on this case.

The tenant claims \$1,500.00 in her application which comprises of double the amount of the security deposit and \$500.00 for the return of the pet damage deposit based on information she had been provided to the Residential Tenancy Branch.

Analysis

Section 38(1) of the Act states that, within 15 days of the landlord receiving the tenant's forwarding address in writing after the tenancy ends, the landlord must repay the security deposit or make an application to claim against it.

I accept that the tenancy was ended by the landlord in accordance with the Act with the notice to end tenancy. Section 90(b) of the Act states that a document served by fax is deemed to have been received three days after it is faxed. Based on the affirmed testimony of both parties, I accept that the landlord received the tenant's forwarding address in accordance with the Act. As a result, the landlord was required to repay the deposits, seek the tenant's consent in writing to make a deduction from the deposits, or make an application to claim against them, within 15 days of receiving the tenant's forwarding address, none of which was done.

Section 38(6) (b) of the Act states that if a landlord does not comply with the above, the landlord must pay the tenant double the amount of the security or pet damage deposit, or both, as applicable.

Policy guideline 17 to the Act states that the arbitrator **will** order return of the deposit whether or not the tenant has applied for its return.

Although the tenant has applied for only \$1,500.00 the tenant is entitled to \$2,000.00 as monetary compensation. As the tenant has been successful in this matter, I also award the tenant the filing fee of \$50.00 for the cost of this application.

The landlord is at liberty to make an application for monetary losses under the Act.

Conclusion

For the reasons set out above, I grant a Monetary Order in the amount of **\$2,050.00** in favor of the tenant pursuant to Section 67 of the Act. This order must be served on the landlord and may then be filed in the Provincial Court (Small Claims) and 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 14, 2014

Residential Tenancy Branch

