



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant seeking an order for the return of the security and pet damage deposit retained by the landlord.

Despite being served by registered mail sent on December 10, 2013, as confirmed by the Canada Post tracking number and tracking data that confirmed successful delivery and that the the landlord signed for the package, the respondent landlord did not appear.

Issue(s) to be Decided

Is the tenant entitled to the return of the security and pet damage deposit pursuant to section 38 of the Act?

Background and Evidence

The tenancy began in September 2012 and ended on August 31, 2013. The rent was \$1,000.00 per month. A security deposit of \$500.00 and a pet damage deposit of \$500.00 were paid. .

The tenant testified that she provided the landlord with her written forwarding address on August 31, 2012. A copy of this communication was in evidence. The tenant testified that the landlord wrote back and stated that she would not be refunding the \$650.00 remaining security deposit and pet damage deposit.

The tenant explained that, although the landlord had collected \$1,000.00 for the deposits, at one point during the tenancy the landlord informed the tenants that they must keep or sell a sofa she had left in their storage. According to the tenant, the landlord stated that the value of this sofa would be considered repayment for part of the tenant's security deposit in the amount of \$350.00. The tenant testified that this incident occurred months before the tenancy ended and stated that they had never agreed to

accept the sofa as a \$350.00 reduction or repayment of their security deposit that was being held in trust by the landlord. The tenant pointed out that they merely wanted the landlord's sofa removed from their storage. The tenant stated that the landlord unilaterally allocated the transaction as a credit to the tenant's deposit in lieu of a portion of their refund without their consent.

The tenants are still seeking double the return of their full \$500.00 security and \$500.00 pet damage deposit, as the landlord failed to refund them within 15 days. This makes the total claim by the tenants \$2000.00.

A copy of a letter from the landlord dated September 11, 2013 stating that she was refusing to refund the "remainder" of the security and pet damage deposits is in evidence. Also in evidence were 2 different copies of the move-out condition inspection report, one of which the tenant claimed was altered by the landlord after they signed it. The tenant submitted photos of the condition of the rental unit.

Analysis

Section 38 of the Act provides that a security deposit or pet damage deposit must be refunded to the tenant within 15 days after the end of the tenancy and the date that the forwarding address was received, whichever is later.

In the alternative, if the landlord wants to retain the deposit to satisfy a debt or damages, the landlord is required to make a claim against a security deposit by filing an application for Dispute Resolution within 15 days after the end of the tenancy and the date that the forwarding address was received, whichever is later.

I accept the tenant's testimony and evidence verifying that that the written forwarding address was received by the landlord in August 2013. I find that the security deposit and pet damage deposit were not returned within the 15-day deadline under the Act.

In regard to the transaction that apparently occurred during the tenancy in which the landlord gave the tenants her sofa valued at \$350.00 to sell in lieu of the landlord's obligation to return an equivalent portion of the tenant's security deposit and pet damage deposit, I find that, whether this arrangement was imposed on the tenants or mutually agreed-upon, it is not consistent with the Act and therefore cannot be recognized nor enforced for the purpose of this arbitration.

Section 62 (1) of the Act grants a Dispute Resolution Officer the authority to determine any disputes in relation to matters that arise under the Act or a tenancy agreement.

However, Section 6(3) of the Act states that a term of a tenancy agreement is not enforceable if a) the term is not consistent with the Act or Regulations, b) the term is

unconscionable, or c) the term is not expressed in a manner that clearly communicates the rights and obligations under it. (My emphasis)

Based on the evidence and the testimony, I find that at the end of the tenancy the tenant did not give the landlord written permission to keep their deposits, nor did the landlord subsequently make an application seeking an order to keep the deposit within the 15-day deadline to do so.

Section 38(6) provides that, if a landlord does not comply with the Act by refunding the deposit or making application to retain it within 15 days, the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

In the matter before me, I find that, under section 38, this tenant is entitled to be paid double the security and pet damage deposits of \$1,000.00 wrongfully retained by the landlord, totalling \$2,000.00, plus the \$50.00 cost of filing the dispute resolution application.

I hereby issue a monetary order for \$2,050.00 in favour of the tenant. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenant is successful in her application and is awarded a monetary order for a refund of double the security deposit.

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: March 31, 2014

Residential Tenancy Branch

