



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, 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 landlord.

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 tenant provided a copy of a tenancy agreement signed by the parties on April 4, 2013 for a 5 month and 26 day fixed term tenancy beginning on April 4, 2013 for a monthly rent of \$1,400.00 due on the 1st of each month with a security deposit of \$700.00 and a pet damage deposit of \$700.00 paid. The tenancy ended on September 30, 2013.

The parties agree the tenant provided the landlord with his forwarding address on September 30, 2014 by text message. The parties also agree the landlord provided a cheque for the return of both deposits on October 19, 2013 when the tenant attended the landlord's home.

The landlord submits that she did not mail it to the tenant because she was not sure that the address provided was his correct address and because the tenant had not provided

the address on paper. The landlord also submits that she had no intention of withholding the deposit but that there were many things going on in her personal life at the time and she was not able to meet the deadline.

The tenant provided several pages of text messages between himself and the landlord and the landlord acknowledged that she and this tenant had communicated largely by phone and by text.

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 in writing, 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.

I note that the *Act* does not specify that the provision of a forwarding address must be in writing **on paper**. I do acknowledge that the *Act* is specific on the methods that a party must serve documents to another party and that none of those methods include text messaging.

However, as the parties had established a pattern of communicating via text message and since the landlord acknowledges receipt of the tenant's forwarding address I find the landlord was obligated as of September 30, 2013 to comply with Section 38(1) of the *Act* and either return the deposits or file an Application to claim against them within 15 days.

If the landlord was uncertain that the address was correct she could have phoned the tenant to confirm the address or at the very least sent the cheque to the address provided by the tenant and I could have considered that she had at least attempted to meet her obligation. As it is, I find the landlord took no action to comply and has therefore failed to comply with the requirements of Section 38(1). Therefore, I find the tenant is entitled to double the amount of both deposits.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,450.00** comprised of \$2,800.00 double security and pet damage deposit and the \$50.00 fee paid by the tenant for this application less \$1,400.00 deposits already returned.

This order must be served on the landlords. If the landlords fail 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: March 21, 2014

Residential Tenancy Branch

