



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with a tenant's application for return double the security deposit and pet damage deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

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

Background and Evidence

The tenancy commenced April 1, 2011 and the tenant paid a security deposit of \$1,000.00 and a pet damage deposit of \$1,000.00. The landlord did not prepare a move-in inspection report. The tenant moved out of the rental unit on October 22, 2013.

The tenant expected to do a move-out inspection with the landlord on October 22, 2013; however, the landlord had to work that day and did not attend the property. The tenant gave the key to the rental unit to the incoming tenant with the agreement of the landlord. The landlord inspected the property without the tenant present on October 26, 2013 but did not prepare a move-out inspection report.

The tenant testified that she gave her forwarding address to the landlord verbally on October 21, 2013 and via email on November 8, 2013. The tenant did not authorize the landlord to make any deductions from the deposits and the landlord has not refunded the deposits to the tenant.

The landlord acknowledged receiving the tenant's forwarding address via email. The landlord testified that she explained to the tenant she would have to make repairs to the

unit and after doing so she would forward the balance of the deposits to the tenant, if any. The landlord claimed that she spend over \$2,000.00 making repairs to the property which is why she has not refunded any part of the deposits to the tenant. The landlord acknowledged that she did not file an Application for Dispute Resolution seeking authorization to make any deductions from the deposits.

Analysis

As the parties were informed during the hearing, the landlord's assertions that the tenant is responsible for damaging the property were not issues for me to decide for this proceeding as the landlord had not made an Application for Dispute Resolution. The purpose of this hearing was to hear the tenant's application and determine whether the landlord complied with the Act with respect to handling the security deposit and pet damage deposit. The landlord remains at liberty to make a separate application for damage within the statutory time limit for doing so.

Where a landlord fails to prepare condition inspection reports, the landlord's right to claim against the deposits for damage is extinguished. In this case, the landlord failed to prepare condition inspection reports and lost the right to claim against the deposits for damage. Therefore, the landlord was required to comply with section 38(1) of the Act by either returning the deposit to the tenant or making an application for dispute resolution within 15 days from the later of the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing.

The Act provides that where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the deposit.

In this case, I am satisfied the tenant provided a forwarding address to the landlord via email. Giving a document to another party via email is not a recognized method of giving the other party a document under section 88 of the Act. Therefore, I am unable to conclude the landlord received the tenant's forwarding address in writing.

I make no award for double the deposits since the tenant did not give the landlord her forwarding address in writing prior to filing this Application for Dispute Resolution; however, I order the landlord to return the deposits to the tenant without further delay since the only alleged losses incurred by the landlord relate to damage and the landlord has lost the right to claim against the deposits for damage has been extinguished.

As the tenant had to file this application in order to retrieve the deposits she is entitled to receive, I award the filing fee to the tenant. Provided to the tenant is a Monetary Order in the sum of \$2,050.00.

The tenant must serve the enclosed Monetary Order upon the landlord and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The tenant has been provided a Monetary Order in the sum of \$2,050.00 to serve and enforce as necessary.

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: April 11, 2014

Residential Tenancy Branch

