



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This was an application by the tenant for a monetary order for the return of her security and pet deposits deposit including double the deposit amounts. The hearing was conducted by conference call. The tenant called in and participated in the hearing. The landlord did not attend although he was served with the Application for Dispute Resolution and Notice of Hearing sent by registered mail on January 17, 2014.

Issue(s) to be Decided

Is the tenant entitled to the return of her security and pet deposits including double the amounts?

Preliminary matter

The tenant testified that when she rented the unit she dealt with the respondent, who is a realtor. The respondent told her that he was acting on behalf of the owner of the rental property but he would not disclose to the tenant the name of the owner. During the course of the tenancy payments were made to the respondent in cash in the case of the security and pet deposits or by cheque with the name of the payee left blank at the request of the respondent. The tenant said that the respondent promised to give her a copy of the tenancy agreement that she signed at the start of the tenancy, but he never did so. The tenant testified that as late as this morning before the hearing she spoke to the respondent who told her that he was aware of this proceeding and would not attend because he was not the landlord, however he told the tenant he was still endeavouring to get the property owner to deal with the tenant's request for the return of her security deposit.

The *Residential Tenancy Act* defines "landlord" as follows:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

Based on the tenant's testimony I find that the respondent has, throughout the tenancy, acted as the owner's agent and exercised powers and performed duties under the *Residential Tenancy Act* and the tenancy agreement. An agent should not be permitted to escape liability while refusing to disclose the identity of the principal for whom he purports to act. I find that the respondent is a proper party to this proceeding and he falls within the definition of "landlord" as set out in the *Residential Tenancy Act*.

Background and Evidence

The rental is the upper suite in a house in Vernon. The tenancy began on October 1, 2012. Monthly rent was \$1,100.00 payable on first day of each month. The tenant paid a security deposit of \$550.00 and a pet deposit of \$275.00 in September, 2012.

The tenant moved out of the rental unit at the end of October, 2013. She provided the landlord with their forwarding address and requested the return of her security and pet deposits in the amount of \$825.00.

The tenant testified that she has provided her forwarding address in writing to the respondent and made repeated requests for the return of her deposit, but the

respondent has neglected or refused to repay them. He has told the tenant that he will try to get the owner to repay the deposits.

Analysis

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

I am satisfied that the tenant provided the respondent with her forwarding address in writing, and I find that the tenant served the landlord with documents notifying the landlord of this application as required by the *Act*.

The tenants' security deposit was not refunded within 15 days as required by section 38(1) of the *Residential Tenancy Act* and the doubling provision of section 38(6) therefore applies. I grant the tenant's application and award her the sum of \$\$1,650.00. The tenant is entitled to recover the \$50.00 filing fee for this application for a total claim of \$1,700.00 and I grant the tenant a monetary order against the landlord in the said amount. This order may be registered in the Small Claims Court 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: April 25, 2014

Residential Tenancy Branch

