



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This is an application filed by the tenant for a monetary order for the return of double the security deposit, for money owed or compensation for damage or loss and recovery of the filing fee.

The tenant attended the hearing by conference call and gave undisputed testimony. The landlord did not attend or submit any documentary evidence. The tenant states that the landlord was served with the notice of hearing by Canada Post Registered Mail on January 3, 2014 and has provided a copy of the Customer Receipt Tracking number as confirmation. The package was sent to the address provided for via the landlord's notice at Coldwell Banker Macpherson Real Estate Ltd. As such, I am satisfied that both parties have been properly served with the notice of hearing package and the submitted documentary evidence.

During the hearing the tenant clarified that the named landlord should be G.L. instead of L.G. and that the name was inadvertently reversed when she filled out the application. As such, the landlord's name shall be amended accordingly and all subsequent documents for this file.

Issue(s) to be Decided

Is the tenant entitled to a monetary order?

Background and Evidence

The tenant states that a \$425.00 security deposit was paid and that the landlord was provided with their forwarding address in writing in a letter dated November 15, 2013 by Canada Post Registered Mail. The tenant states that this tenancy ended on October 31, 2013 after receiving a 2 month notice to end tenancy issued for landlord's use (copy

provided) dated August 29, 2013 with a stated effective date of October 31, 2013. The tenant states that the landlord's agent, B.P. who signed and dated the notice provided to all of the tenants compensation of 2 free months of rent for September and October for the inconvenience of the short notice. The tenant has provided a copy of a signed statement from one of the other tenants who confirms this compensation in lieu of return of the security deposit. The tenant states that prior to receiving this offer, the tenant paid the September rent of \$800.00 through an internet bill payment and has provided the transaction number dated August 30, 2013. The tenant states that the property agent, B.P. informed them that the \$800.00 should be taken back.

Analysis

I accept the undisputed testimony of the tenants and find that the tenants provided their forwarding address in writing to the landlord on November 15, 2013 by Canada Post Registered Mail for the return of the \$425.00 security deposit after the tenancy ended on October 31, 2013. The landlord is deemed to have been served 5 days later on November 20, 2013.

Section 38 of the Residential Tenancy Act states,

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) *[service of documents]* or give the deposit personally to the tenant.

The landlord failed to return the \$425.00 security deposit as per the Act within the 15 day time period and as such must pay the tenant double the amount of the security deposit. The tenant has established a claim for \$850.00.

As for the return of the overpayment of rent of \$800.00, I find on a balance of probabilities that an agreement was made by the landlord to the tenants and the landlord failed to comply with this agreement as per the signed statement by the other tenant, M.H. in apt. 5030. The tenant has established a claim for \$800.00.

The landlord has established a total monetary claim of \$1,650.00. The tenant is also entitled to recovery of the \$50.00 filing fee. I grant the tenant a monetary order for \$1,700.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant is granted a monetary order for \$1,700.00.

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 17, 2014

Residential Tenancy Branch

