



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NPR GP Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

This is an application filed by the tenant for a monetary order for the return of double the security deposit 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 package and the submitted documentary evidence in person on January 21, 2014. The tenant states that her friend, G.P. personally served the package to the property manager onsite. The witness, G.P. confirmed in his direct testimony that he personally served the property manager on site on January 21, 2014. As such, I find that both parties have been properly served with the notice of hearing package and the submitted documentary evidence.

Issue(s) to be Decided

Is the tenant entitled to a monetary order?

Background and Evidence

This tenancy began on September 1, 2013 on a month to month basis as shown by the partial copy of the signed tenancy agreement. The monthly rent was \$800.00 payable on the 1st of each month and a security deposit of \$400.00 was paid on September 3, 2013 as shown by the submitted copy of the receipt.

The tenant states that she gave notice to vacate the rental unit on September 30, 2013 to move-out on October 31, 2013. On October 31, 2013 a condition inspection report for the move-out was completed and she provided her forwarding address in writing to the landlord as shown by the submitted copy. The tenant states that the landlord failed

to return the \$400.00 security deposit within the allowed timeframe and as of the date of this hearing still has not returned it. The tenant states that she has made 3 verbal requests since ending the tenancy for the return of the \$400.00 security deposit.

Analysis

I accept the undisputed testimony of the tenant and the tenant's witness and find that the landlord has failed to comply with section 38 of the Residential Tenancy Act.

Section 38 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 comply with the Act by returning the \$400.00 security deposit within the allowed 15 day timeframe nor did the landlord file an application for dispute resolution to dispute returning the security deposit as per section 38 (1). Pursuant to section 38 (6) the landlord must pay the tenant double the amount of the security deposit. The tenant is also entitled to recovery of the \$50.00 filing fee. I grant a monetary order for \$850.00. 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 \$850.00.

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: May 02, 2014

Residential Tenancy Branch

