



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

The tenant applies for the return of the balance of the tenant's security deposit. At the hearing the tenant she was also seeking recovery of double the deposit. The tenant also applies for recovery of time taken from work, in order to handle this dispute. The tenant also seeks recovery of her filing fee from the landlord.

Both parties submitted written statements and evidence, and both attended the hearing.

Issue(s) to be Decided

The issues in this case are:

- Is the tenant entitled to recover the unreturned balance of her security deposit from the landlord?
- Do the doubling provisions apply in this case?
- Is the tenant entitled to recover the value of time taken off work from the landlord?
- Is the tenant entitled to recover the filing fee from landlord?

Background and Evidence

The relevant testimony of the tenant is summarized as follows:

The tenancy began October 1, 2012, and ended on March 1, 2014. Monthly rent was \$825.00, and a security deposit of \$425.00 was paid 1 or 2 weeks before the tenancy started. There was no walk through of the premises with the landlord either before the tenancy began, or when it ended. There was no condition inspection report prepared by the landlord either at the start or the end of the tenancy.

On March 20, 2014, the landlord e-transferred the sum of \$373.41 to the tenant, representing the return of most of the tenant's deposit. The landlord has not returned the balance of \$51.59. The landlord received the tenant's new forwarding address, when the landlord received the tenant's Application for Dispute Resolution.

The tenant has two jobs, and was also busy moving herself and her boyfriend. She had to take off 11 hours from work in order to read information about

tenant's rights, filing her application, corresponding with third parties, amending her application, and serving documents.

The relevant testimony of the landlord is largely similar to the tenant's, but with the following differences:

- The tenancy ended on February 28, 2014, (not March 1, 2014).
- Monthly rent was \$850.00, (not \$825.00).
- The landlord and tenant walked through the premises on the same day the deposit was paid.
- The landlord e-transferred the sum of \$373.41 on March 14, 2014 (not March 20, 2014).
- The landlord has also had to lose time from work to deal with the tenant's claim.

Analysis

In terms of the date of the end of the tenancy, I prefer the testimony of the tenant. I note that her testimony as to the tenancy ending February 28, 2014 is supported by written statements.

In terms of the monthly rent, I prefer the testimony of the landlord. I find it more likely, as testified to by the landlord, that the deposit was exactly 50% of the monthly rent.

In most situations, section 38(1) of the Residential Tenancy Act requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address, (which ever is later) to either return the deposit or file an application to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the security deposit (section 38(6)).

In this case, the tenant never provided the landlord with her forwarding address in writing (until she filed her claim). The legislation is clear that it is the landlord has no obligation to return the deposit until 15 days after the forwarding address is provided, and therefore at the time of the filing of the tenant's claim, any obligation of the landlord to return the deposit had not yet been triggered. The tenant's claim to recover the balance of the deposit was filed prematurely, and therefore must be dismissed. It follows that the claim to recover the filing fee must also fail, as well as the claim for lost time from work.

While this resolves the present claim, I clarify that the tenant has liberty to reapply for recovery of double the balance of her deposit from the landlord, in the event that it is not returned by the landlord. I note that the landlord acknowledges having received the tenant's forwarding address when she received the tenant's first application for dispute, and no further service is required as to the forwarding address as more than 15 days has passed since the landlord received the address.

I further clarify that the landlord also has liberty to apply for a claim as against the tenant for any alleged loss or damage suffered as a result of this tenancy.

Conclusion

The tenant's claim is dismissed.

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: June 05, 2014

Residential Tenancy Branch