



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened by way of conference call in response to the tenant's application to recover the security deposit.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*; served by registered mail on March 26, 2014. Canada Post tracking numbers were provided by the tenant in sworn testimony. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order to recover the security deposit?

Background and Evidence

The tenant testified that this tenancy started on June 01, 2012 for a fixed term of one year. The tenancy continued after that time on a month to month basis. Rent for this unit

was \$1,200.00 per month and was due on the 1st day of each month in advance. The tenant paid a security deposit of \$700.00 on June 01, 2012. The tenancy ended on April 01, 2014.

The tenant testified that the landlord did not give the tenant opportunity to attend either a move in or a move out condition inspection of the rental unit at the start and end of the tenancy. The tenant testified that all correspondence with the landlord was done via e-mail as the landlord lived out of Provence. The tenant testified that she gave the landlord her forwarding address by email on March 18, 2014 and requested that the landlord return the security deposit. The tenant testified that the landlord responded by email and stated that he was not going to return the tenant's security deposit due to cleaning and damages to the unit.

The tenant testified that the unit was left in a clean condition and referred to the photographic evidence showing how clean the unit was at the end of the tenancy. The tenant testified that she did agree that the landlord could deduct \$200.00 to replace one internal door in the unit due to crayon marks left on the door by the tenant's son.

The tenant testified that the landlord has not returned the balance of the security deposit of \$500.00. The tenant seeks to amend her application to recover double the balance of the security deposit as the landlord failed to do the inspection reports with the tenant and failed to return the balance of the security deposit within 15 days of receiving the tenant's forwarding address.

Analysis

Section 38(1) of the *Residential Tenancy Act (Act)* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenant's forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all

or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Sections 23(4), 35(3) of the *Act* require a landlord to complete a condition inspection report at the beginning and end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign the condition inspection report. In failing to complete the condition inspection reports when the tenant moved in and out, I find the landlord contravened s. 23(4) and s. 35(3) of the *Act*. Consequently, s. 24(2)(a) and s. 36(2)(a) of the *Act* says that the landlord's right to claim against the security deposit for damages is extinguished.

When a landlord's right to claim against the security deposit has been extinguished the landlord must return the security deposit to the tenant within 15 days of either the end of the tenancy or the date the tenant gives the landlord their forwarding address in writing. Therefore, based on the above and the evidence presented I find that the landlord did receive the tenant's forwarding address in writing on March 18, 2014 I am satisfied that the parties communications were conducted by e-mail and therefore I deem that the landlord did receive the tenant's forwarding address in writing for the purposes of the *Act*. I am also satisfied that the tenant agreed in writing that the landlord could keep \$200.00 of the security deposit for the damage to the door. As a result, the landlord had until April 02, 2014 to return \$500.00 of the tenant's security deposit. As the landlord failed to do so, the tenant has established a claim for the return of the security deposit to an amount of **\$500.00**, pursuant to section 38(6)(b) of the *Act*. There has been no accrued interest on the security deposit for the term of the tenancy.

I further find that even though the tenant has not applied for double the security deposit, I am required to order that the landlord must pay double the amount of the security deposit to the tenant.

Conclusion

I HEREBY FIND in favor of the tenant's amended monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$1,000.00**. The Order must be served on the Respondent and is enforceable through the Provincial Court 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: July 14, 2014

Residential Tenancy Branch

