



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and the landlord.

At the outset of the hearing I noted that both parties had submitted substantial information regarding issues throughout the tenancy and at the end of the tenancy. I advised that despite this information this hearing was to determine if the landlord had disposed of the security deposit in accordance with his obligations under the *Residential Tenancy Act (Act)*.

I advised both parties that if the landlord felt he has suffered any losses from the tenancy he remains at liberty to file his own and separate Application for Dispute Resolution to claim against the tenant.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for return of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenancy began on December 1, 2011 as a month to month tenancy for the monthly rent of \$1,000.00 due on the 1st of each month with a security deposit of \$500.00 paid. The tenancy ended on April 30, 2014.

The tenant submits that no move in condition inspection or move out condition inspection was completed or that any Condition Inspection Reports were provided to her recording the condition of the rental unit either at the start or end of the tenancy.

The tenant submits she provided the landlord with her forwarding address in writing on April 19, 2014 by leaving a letter at what she believed was his residence. The landlord testified that he never received this letter. He also states that this address is where he was living at the time but that it is his parent's address.

The landlord acknowledges that towards the end of May 2014 while he was out of province the tenant's hearing package, including her Application for Dispute Resolution listing her address, was left on his doorstep. The tenant testified that she attempted to serve it to the landlord's girlfriend but she would not take it and she left it on the doorstep. The landlord stated he returned approximately mid June 2014 and that is when he received the package.

Analysis

Section 23 of the *Act* requires a landlord and tenant to inspect the rental unit on the day the tenant is entitled to possession of the unit. The Section goes to state that it is the landlord's obligation to set the time of the inspection and complete a Condition Inspection Report and provide a copy of that Report to the tenants.

Section 24 stipulates that the landlord extinguishes her right to claim against a security deposit if the landlord does not provide the tenants with at least 2 opportunities to complete a move in inspection; or does provide the opportunity but then does not participate in the inspection; or does not complete the Condition Inspection Report and give a copy to the tenants.

Section 35 of the *Act* stipulates that the landlord and tenant must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit or on another mutually agreed upon day. The Section goes on to say the landlord must offer the tenant at least 2 opportunities to complete the inspection.

Section 36 states that, unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit or both, for damage to the residential property is extinguished if the landlord does not provide 2 opportunities for an inspection; does not participate in the inspection; or having made an inspection does not complete a condition inspection report.

From the tenant's undisputed testimony I find the landlord has extinguished his right to claim against the security deposit for damage to the rental unit.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit.

Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

The evidence presented to me regarding the provision of the tenant's forwarding address consisted of disputed testimony. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their version of events. The tenant has provided no additional evidence to support her position that she served the landlord with her forwarding address on April 19, 2014.

As such, I find the landlord received the tenant's forwarding address by mid June 2014. I find that since the landlord cannot be specific as to when he received it mid June will be June 15, 2014. Therefore, I find the landlord had until June 30, 2014 to either return the deposit in full or file an Application for Dispute Resolution to claim against the deposit.

For the above noted reasons, I find the landlord has failed to comply with the requirements under Section 38(1) of the *Act* and as such the tenant is entitled to double the amount of the security deposit pursuant to Section 38(6). I note also that the Residential Tenancy Branch interest rate for the period of this tenancy was 0%.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,050.00** comprised of \$1,000.00 double the amount of the security deposit and the \$50.00 fee paid by the tenant for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: September 30, 2014

Residential Tenancy Branch

