



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order to recover double the security and pet deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. The parties presented other evidence that was not pertinent to my decision. I looked at the evidence that was pertinent and based my decision on this.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for double the security and pet deposit?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started on September 14, 2013 for a fixed term which ended on April 30, 2014. Rent for this unit was \$1,200.00 per month and was due on the 1st of each month. The tenant paid a security deposit of \$600.00 and a pet

deposit of \$400.00 on September 02, 2013. Both Parties attended an inspection of the unit at the start and end of the tenancy and the tenant provided the landlord with a forwarding address in writing on April 30, 2014.

The tenant testified that the home and yard were left spotless and the landlord indicated at the move out condition inspection that she would return the tenant's security and pet deposit by cheque. The tenant informed the landlord that the landlord only had had 15 days to return the deposits. The tenant testified that by May 14, 2014 the tenant had still not received a cheque from the landlord so emailed the landlord about this and was informed that a cheque was in the mail.

The tenant testified that she did not receive this cheque by May 20, 2014 so filed this application for dispute resolution. On May 28, 2014 the tenant did receive the cheque in the mail. This cheque was dated May 15, 2014; however the postmark on the envelope it was sent in was dated May 22, 2014. The tenant testified that the landlord had informed the tenant that she was putting a stop on that cheque and issuing a new cheque so the tenant did not cash the first cheque for \$1,000.00. The tenant testified that the landlord issued a new cheque and the tenant received this on May 29, 2014 by registered mail. The tenant testified that she has not yet cashed this cheque.

The tenant submits that as the landlord did not return the security and pet deposit within 15 days the tenant seeks to recover double the security and pet deposits to the amount of \$2,000.00.

The tenant testified that the rental agreement included the whole house and yard; however, the landlord had not moved all of her belongings from one of the downstairs rooms which prevented the tenant having the use of that room. The landlord also had belongings stored in an outside shed. The tenant testified that many emails were exchanged concerning the removal of these belongings but the landlord did not comply and the landlord's belongings were stored in the rental unit for the entire tenancy of seven months.

The tenant testified that in November, 2013 the landlord agreed that the storage of the landlord's belongings in the rental unit was worth \$50.00 a month. The tenant deducted the amount of \$250.00 from the rent in January, 2013 to cover that storage for five months; however, the landlord served the tenant with a 10 Day Notice to End Tenancy for unpaid rent in January. The tenant later paid the \$250.00 within five days of receiving the Notice and the Notice was deemed to no longer have any effect at a hearing held on February 28, 2014.

The tenant seeks to recover \$50.00 a month for the seven months that the tenant lost the use of the room and shed in the rental unit to an amount of \$350.00.

The tenant also seeks to recover the \$50.00 filing fee from the landlord.

The landlord testified that the first security and pet deposit cheque was dated on May 15, 2014 as this was the 15th day the landlord had to return the deposits; however, the cheque was posted through Canada Post on or about May 12, 2014. The landlord testified that she contacted Canada Post and was informed that if the mail is collected by contractors and if the contractor is on vacation then mail would not be collected until that contractor returned to work. The landlord testified that this is the reason the envelope is date stamped as May 22, 2014. The landlord testified that the tenant did not inform the landlord that she had not received the first cheque and the landlord sent another cheque after being served with the tenant's application and Notice of hearing.

The landlord testified that when the tenant wanted to rent the house in August 2013, the tenant was aware that the landlord's belongings were stored in one room. The landlord testified that the tenant also knew that the landlord was unsure when she could remove her belongings; however, between September and November the landlord received numerous emails from the tenant asking the landlord to remove her belongings. At that time the landlord offered the tenant a \$50.00 rent reduction for the landlord's use of that one room. The landlord testified that as the tenant did not respond to that offer the landlord later rescinded the offer. The landlord testified that the room is 85 square feet

and the whole house is 2,422 square feet; therefore the offer of \$50.00 a month is too high for the space the tenant could not use.

Analysis

I refer the parties to Section 38(1) of the *Act* that 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 and pet 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 or pet deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security and pet deposit to the tenant.

I have carefully considered all the evidence before me, including the sworn testimony of both parties. The landlord has testified that she sent the cheque for the security and pet deposit on or about May 12, 2014, the tenant has testified that this cheque was not sent until May 22, 2014 and has provided corroborating evidence of this by way of the envelope postmarked by Canada Post on May 22, 2014. The landlord has insufficient evidence to support her claim that this cheque was sent to the tenant within the 15 allowable days.

Based on the above and the evidence presented I find that the landlord did receive the tenant's forwarding address in writing on April 30, 2014. As a result, the landlord had until May 15, 2014 to return the tenant's security and pet deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return the security or pet deposit within the 15 allowable days although a cheque had been received by the tenant on May 28, 2014, I find that the tenant has established a claim for the return of double the security and pet deposit to an amount of \$2,000.00 pursuant to section 38(6)(b) of the *Act*. As the tenant still has a cheque in her possession for \$1,000.00 I find the tenant's monetary award will be limited to **\$1,000.00**.

With regard to the tenant's monetary claim for compensation for the loss of one room and a shed in the rental unit; if the tenant rented the entire property the landlord should have made preparations to ensure the property was empty of all the landlord's belongings. The landlord agreed that she still had belongings in one bedroom and a shed which would have restricted the tenant's access to these areas. I therefore find the tenant is entitled to some compensation for the loss of use of these areas and find the amount of \$50.00 a month to be fair and reasonable. The tenant's claim to recover the amount of **\$350.00** is therefore upheld.

As the tenant's application has merit, I find the tenant is entitled to recover the **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$2,400.00** pursuant to s. 67 and 72(1) of the *Act*. The Order must be served on the respondent. Should the respondent fail to comply with the Order the Order may be enforced 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: September 02, 2014

Residential Tenancy Branch

