



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD; MNDC; FF

Introduction

This is the Tenant's application, filed June 16, 2014, for a monetary award for double the amount of the security deposit; for the equivalent of one month's rent in compensation for a Notice to End Tenancy for Landlord's Use; and to recover the cost of the filing fee from the Landlord.

The Tenant gave affirmed testimony at the Hearing.

The Tenant testified that she sent the Notice of Hearing documents and copies of her documentary evidence to the Landlord, by registered mail, on June 16, 2014. The Tenant provided a copy of the registered mail receipt and tracking number in evidence.

Based on the Tenant's evidence, I am satisfied that the Landlord was duly served in accordance with the provisions of Section 89(1)(c) of the Act. Despite being duly served, the Landlord did not sign into the Hearing which remained open for 30 minutes. The Tenant's application proceeded in the Landlord's absence.

Issues to be Decided

- Is the Tenant entitled to a monetary order for double the security deposit pursuant to the provisions of Section 38 of the Act?
- Is the Tenant entitled to compensation in the equivalent of one month's rent pursuant to the provisions of Section 51(1) of the Act?

Background and Evidence

The Tenant gave the following testimony:

- The Tenant paid a security deposit in the amount of \$375.00 in April, 2009.
- The Tenant gave the Landlord written notice of her forwarding address on May 18, 2014. The Tenant provided a copy of the letter in evidence.

- The tenancy ended on June 1, 2014, pursuant to a 2 month Notice to End Tenancy for Landlord's Use. The Tenant provided a copy of the Notice to End Tenancy in evidence.
- On June 18, 2014, the Tenant received a cheque in the mail from the Landlord in the amount of \$1,105.00 representing return of the security deposit in full together with one month's compensation for the Notice to End Tenancy. The Tenant has cashed the cheque. The Tenant provided a copy of the cheque, a note from the Landlord explaining the amount, and a copy of the envelope in which the note and cheque were contained.

The Tenant submits that the Landlord still owes her \$375.00 because she did not receive the security deposit refund within 15 days of the end of the tenancy.

Analysis

A security deposit is held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing (which ever date is the latter), a landlord has 15 days to either:

1. repay the security deposit in full; or
2. file an application claiming against the security deposit.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord must pay the tenant double the amount of the security deposit.

The Act provides that the Landlord must **repay** the security deposit within 15 days, it does not provide that the Tenant must **receive** the security deposit within 15 days.

In this case the triggering date for return of the security deposit was June 1, 2014, and therefore I find that the Landlord had until June 16, 2014, to return the security deposit to the Tenant. The date and time stamp on the envelope indicates that the security deposit was mailed on June 15, 2014, at 3:27 p.m.

Therefore, I find that the Landlord returned the Tenant's security deposit within the time frames allowed in the Act and that Section 38(6) of the Act does not apply in this situation.

Conclusion

The Tenant's application **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: October 23, 2014

Residential Tenancy Branch

