



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 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.

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 July 03, 2014. Canada Post tracking numbers were provided by the tenant in documentary evidence. 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 double the security deposit?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The tenant testified that this tenancy started on May 15, 2013 for a fixed term tenancy until December 01, 2013 with the option of reverting to a month to month tenancy. Rent

for this unit was \$1,000.00 per month due on the 1st of each month. The tenant paid a security deposit of \$500.00 and a pet deposit of \$500.00 on May 15, 2013.

The tenant testified that both parties attended a move in and a move out condition inspection of the rental unit; however, the parties did not agree to the comments made on the move out inspection report and both parties did not sign the inspection at the end of the tenancy. The tenant testified that she provided the landlord with her forwarding address on the morning of the move out condition inspection on July 08, 2014 by email. The tenant later wrote her forwarding address out and gave this again to the landlord after the move out inspection was completed on the evening of July 08, 2014. The tenant refers to the text message exchange between the parties and referred to the text message in which the tenant requested the landlord's email address to send to send the landlord the tenants forwarding address.

The tenant testified that the landlord has not returned the tenant's security or pet deposit to the address provided by the tenant within the 15 allowable days. The tenant seeks to recover double the security and pet deposits to an amount of \$2,000.00.

The tenant testified that there had been a flood at the rental unit. The landlord informed the tenant that she would have to vacate the unit and the parties signed a mutual agreement to end the tenancy on July 01, 2013. The tenant testified that the rent for June had been paid in full; however, the tenant was unable to live in the rental unit from June 26, 2013 due to the flood and the landlord had agreed to return the balance of rent paid from June 26 to June 30, 2014. The tenant referred to the text message exchange provided in documentary evidence and in particular the text message from the landlord in which the landlord has agreed to return the rent.

The tenant testified that the landlord has not returned \$133. 32 for the rent for the final four days of the tenancy. The tenant therefore seeks to recover this from the landlord as this flood occurred through no fault of the tenant and rendered the unit unlivable.

The tenant seeks to recover the cost for sending registered mail to the landlord of \$15.00. The tenant also seeks to recover the filing fee of \$50.00.

Analysis

The landlord did not appear at the hearing to dispute the tenant's claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the landlord, I have carefully considered the tenants documentary evidence and sworn testimony before me.

With regard to the tenant's claim to recover double the security and pet deposit; I refer the parties to s. 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 tenants 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.

Based on the above and the evidence presented I find that this tenancy ended on July 01, 2013 by mutual agreement and the landlord received the tenant's forwarding address in writing on July 08, 2013. As a result, the landlord had until July 23, 2013, to return the tenant's security and pet deposit or file an application to keep it. I find the landlord did not return the security or pet deposit and has not filed an application to keep it. Therefore, I find that the tenant has established a claim for the return of double the security and pet deposit to the sum of **\$2,000.00** pursuant to section 38(6)(b) of the *Act*.

With regard to the tenant's claim to recover rent from June 26 to July 01, 2013; I have reviewed the evidence before me and find there was a flood in the unit which required restoration work. There is sufficient evidence to show that the landlord requested the tenant to remove her belongings from the unit to allow the restoration company to deal with the flood damage. I am satisfied that the rental unit was not suitable for occupation

during this time and am further satisfied that the landlord agreed to return rent to the tenant that was paid for the last few days of the tenancy. I therefore uphold the tenant's claim to recover **\$133.32** pursuant to s. 67 of the *Act*.

With regard to the tenant's claim to recover the costs of registered mail to send the hearing package and evidence to the landlord; there is no provision under the *Act* for costs incurred to serve the other party with hearing documents. Consequently, this section of the tenant's claim for \$15.00 is dismissed without leave to reapply.

As the tenant's claim 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 largely in favor of tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$2,183.32**. The Order must be served on the respondent. If the respondent fails to pay the Order, the Order 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: November 10, 2014

Residential Tenancy Branch

