



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This is an application filed by the tenant for a monetary order for the return of double the security deposit and recovery of the filing fee.

The tenant attended the hearing by conference call and gave undisputed testimony. The landlord did not attend or submit any documentary evidence. The tenant states that the landlord was served with the notice of hearing package and the submitted documentary evidence by Canada Post Registered Mail on July 16, 2014. The tenant has provided a copy of the Canada Post Registered Mail Customer Receipt Tracking number as confirmation.

Issue(s) to be Decided

Is the tenant entitled to a monetary order?

Background and Evidence

The tenant states that this was a sublet tenancy where there was no signed tenancy agreement. The tenant states that the monthly rent was \$400.00 and that a security deposit of \$200.00 was paid.

The tenant states that she gave 30 days notice on January 27, 2014 to vacate the rental unit. The tenant states that she left on February 17, 2014 before the end of the tenancy on February 28, 2014 and was given a post dated cheque dated February 28, 2014 for the return of the security deposit with a \$40.00 deduction. The tenant waited until March 18, 2014 before cashing it. The tenant states that the cheque was cancelled by the landlord. The tenant state that a request (a letter) for the return of the security deposit was sent on March 4, 2014 by regular mail and again by Canada Post

Registered Mail on March 20, 2014. The tenant states that as of the date of this hearing the landlord has not returned any part of the \$200.00 security deposit.

The tenant has provided a copy of the notice of intent to vacate letter dated January 28, 2014, a copy of a receipt for a \$200.00 security deposit from the landlord dated November 22, 2013, 3 rent receipts, a copy of a letter dated March 4, 2014 requesting the return of the security deposit, a copy of a letter dated March 20, 2014 requesting the return of the security deposit and a copy of a Canada Post Customer Receipt Tracking number showing that the tenant served the landlord with the request by Registered Mail on March 20, 2014. The tenant has also submitted a copy of the cheque for \$160.00 from the landlord for the return of the security deposit dated February 28, 2014.

The tenant seeks a monetary order for \$400.00 for the return of double the security deposit.

Analysis

Section 38 of the Residential Tenancy Act speaks to the return of a security deposits. It states,

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) *[service of documents]* or give the deposit personally to the tenant.

I accept the undisputed evidence of the tenant and find that the landlord has failed to return the \$200.00 security deposit within the allowed time frame after the tenancy ended on February 28, 2014. The landlord was notified in writing on March 4, 2014 by letter and again in writing on March 20, 2014 by Canada Post Registered Mail. The

landlord has not applied for dispute resolution to dispute the notice within the allowed time frame. As such the landlord has failed to comply with Section 38 of the Residential Tenancy Act and Section 38 (6) applies. The landlord must pay the tenant double the amount of the security deposit. The tenant has established a claim for \$400.00. The tenant is also entitled to recovery of the \$50.00 filing fee. I grant the tenant a monetary order for \$450.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant is granted a monetary order for \$450.00.

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: December 12, 2014

Residential Tenancy Branch

