



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 dealt with an application by the tenant for a monetary order for the return of double the security deposit, for the return of rent and for the recovery of the filing fee.

Service of the hearing document, by the tenant to the landlord, was done in accordance with section 88 of the *Residential Tenancy Act*, sent via registered mail on December 01, 2014. The tenant filed a receipt with a tracking number and proof that the package was received by the landlord on December 15, 2014. Despite having been served the notice of hearing, the landlord did not attend the hearing. The tenant attended the hearing and was given full opportunity to present evidence and make submissions.

Issues to be Decided

Is the tenant entitled to the return of double the security deposit, rent and the filing fee?

Background and Evidence

The tenancy began in April 2009. The monthly rent was \$1,950.00 due on the 15th of each month and prior to moving in the tenant paid a security deposit of \$975.00. The tenant provided the landlord with postdated rent cheques.

The tenant stated that through the tenancy of four years she communicated with the landlord primarily by text message. On July 13, 2013, the tenant provided the landlord with notice by text message, to end the tenancy effective August 15, 2013. On the day the tenant moved out, the landlord attended the rental unit and conducted a move out inspection. The landlord wrote a cheque in the amount of \$975.00 dated August 15, 2013, to the tenant for the return of the security deposit.

On the same day, the landlord returned all postdated rent cheques that were in his possession, to the tenant except for the cheque dated August 15, 2013. He explained to the tenant that the cheque was already at the bank and that he would retrieve it and return it to the tenant.

The tenant stated that on August 27, 2013, the cheque for the return of the security deposit was returned to her by the bank, for insufficient funds. The rent cheque for August 2013 was cashed by the landlord even though he had promised the tenant that he would return the cheque to her. The tenant filed a copy of her bank statement to support her testimony and confirm the above transactions.

Shortly after, the tenant moved out of the country and instructed the landlord to return the deposit and rent to her son who continued to rent a room in the dispute rental unit. The landlord failed to do so and the tenant's son moved out in December 2013. The tenant made several attempts to contact the landlord by telephone and provided a copy of her telephone bill to confirm that she did so. The landlord did not respond.

The tenant returned to Canada in April 2014 and on May 01, 2014 sent the landlord a letter by registered mail with a request for monies owed and provided a forwarding address. The tenant filed a copy of the letter and the tracking slip. The tenant did not hear back from the landlord. On June 02, 2014, the tenant made this application.

Analysis

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. Based on the sworn testimony of the tenant and in the absence of any contradictory evidence, I find that the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address and is therefore liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security deposit.

The landlord currently holds a security deposit of \$975.00 and is obligated under section 38 to return double this amount (\$1,950.00) plus interest on the base deposit (\$0.00).

Based on the sworn testimony of the tenant and the documentary evidence filed by the tenant, I find that the tenant provided adequate notice to end the tenancy. I further find that the landlord failed to return the postdated rent cheque to the tenant and proceeded to cash the rent cheque even after the tenancy had ended.

Therefore I find that the tenant is entitled to the return of \$1,950.00 which is the amount of the postdated cheque.

Since the tenant has proven her claim, she is also entitled to the recovery of the filing fee (\$50.00).

Overall the tenant has established a claim for the return of the double the security deposit (\$1,950.00) the return of rent (\$1,950.00) plus the recovery of the filing fee (\$50.00) for a total of \$3,950.00.

I grant the tenant an order under section 67 of the *Residential Tenancy Act*, for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court

Conclusion

I grant the tenant a monetary order for **\$3,950.00**.

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: January 07, 2015

Residential Tenancy Branch

