



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD

Introduction

This hearing dealt with an application by the tenant for an order compelling the landlord to return double her security deposit. Both parties participated in the conference call hearing.

Issue to be Decided

Is the tenant entitled to an award of double her security deposit?

Background and Evidence

The facts are not in dispute. The tenancy began in August 2013 at which time the Ministry of Income Assistance (the “Ministry”) paid the landlord \$350.00 as a security deposit on behalf of the tenant. The tenancy ended on July 1, 2014 and on July 28, 2014 the tenant gave the landlord her forwarding address in writing to request the return of the security deposit.

The landlord testified that she did not repay the security deposit to the tenant because it had been paid to her by the Ministry and she believed that only the Ministry had the right to its return. She further testified that the tenant had damaged the fireplace in the rental property and had owed rent and therefore she kept the deposit in partial compensation for those losses.

The tenant denied having damaged the fireplace but acknowledged that she did not pay rent for the month of June.

There is no evidence that the tenant gave the landlord written permission to retain the security deposit.

Analysis

Section 38(1) of the Act provides that when a tenant vacates the rental unit and gives the landlord her forwarding address in writing, the landlord has 15 days to either return the deposit in full or file an application with the Residential Tenancy Branch to keep the deposit. In this case, the landlord did neither. Section 38(6) provides that when a landlord fails to comply with section 38(1), she must pay the tenant double the security deposit.

Although I appreciate that rent may be outstanding and that the landlord believes that the tenant damaged the rental unit, the landlord may not arbitrarily decide to retain the security deposit. Rather, she is required to either obtain an order from an arbitrator or the tenant's written consent to retain the deposit. I find that the landlord is obligated to return double the tenant's security deposit and I therefore award the tenant \$700.00. I grant the tenant a monetary order under section 67 for this sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

The landlord is free to file a claim against the tenant for unpaid rent and damage to the rental unit.

Conclusion

The tenant is granted a monetary order for \$700.00.

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: February 25, 2015

Residential Tenancy Branch

