



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was convened in response to an application by the tenant for a Monetary Order for the return of the security deposit and compensation under Section 38. The application is inclusive of an application for recovery of the filing fee for this application.

Both the tenant and the landlord were represented at today's hearing. Only the tenant provided document evidence which they claim was provided to the landlord along with the Notice of Hearing package sent by registered mail on September 03, 2014 and received by the landlord September 13, 2015. The tenant provided proof of registered mail service. Both parties were also permitted to present any relevant evidence in testimony. The parties were also provided opportunity to discuss their dispute with a view to settling all matters. Prior to concluding the hearing both parties acknowledged presenting all of the *relevant* evidence that they wished to present.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The *undisputed* relevant facts of the parties before me are as follows.

The tenancy began February 01, 2014 and ended June 01, 2014. Rent was \$840.00 per month payable in advance on the 1st. of every month. At the outset of the tenancy the landlord collected a security deposit of \$420.00 and a pet damage deposit of \$200.00 - for a total of \$620.00 - of which the landlord returned \$100.00 and retains

\$520.00. At the outset of the tenancy the parties conducted a mutual condition inspection with the requisite report. The parties did not agree as to how the dual deposits of the tenancy should be dealt with at the end of the tenancy.

The *disputed* testimony of the parties is as follows.

The tenant claims they did not have hot water for a week and ultimately “lost” a parking spot under the tenancy agreement. Neither party provided a copy of the tenancy agreement. The landlord disputes the tenant’s claims in respect to the hot water and the parking spot and the tenant did not sufficiently articulate how these matters have a bearing on their claim or if they sought compensation.

Neither party provided document evidence respecting the condition inspection of the rental unit. The tenant claims the entire amount of the dual deposits was promised returned - with which the landlord disagreed. The landlord claims the rental unit was inspected by both of the parties and that the rental unit was left damaged, and they have proof of the damage by the tenant. However, the landlord did not forward a copy of the move out condition inspection report to the tenant. Through discussion the landlord was apprised that if they have evidence of a compensable claim it is available to them to file for dispute resolution.

The tenant provided that they gave the landlord their written forwarding address on June 23, 2014, by posting it on the landlord’s door. The tenant provided a photograph of a hand-written note dated “Monday June 23, 2014” containing a forwarding address, and a photograph of a piece of paper on a door - with the name of the landlord on the paper. The landlord denies receiving such written notification from the tenant.

Analysis

On preponderance of the relevant evidence for this matter, I find the tenant and landlord did not agree as to how the dual deposits of the tenancy should be administered at the end of the tenancy. I find the tenant has advanced sufficiently credible evidence they provided the landlord their forwarding address in writing on June 23, 2014 by posting it on the landlord’s door, pursuant to a method prescribed by Section 88 of the Act. As prescribed by Section 90 of the Act, the landlord is deemed to have received the forwarding address on the third day thereafter - on June 26, 2014.

Section 38(1) of the Act provides as follows (**emphasis added**)

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

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant’s forwarding address in writing,

the landlord **must** do one of the following:

38(1)(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;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

I find that the landlord failed to repay the security deposit, or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing on June 26, 2014 and is therefore liable under section 38(6) which provides:

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

I find the landlord held a security deposit and pet damage deposit of \$620.00 and was obligated under Section 38 to return this amount. The amount which is doubled is the original amount of the deposits. As a result I find the tenant has established an entitlement claim for \$1240.00 - from which I deduct the \$100.00 the tenant has already received from the landlord. The tenant is further entitled to recovery of the 50.00 filing fee for a total entitlement of **\$1190.00**.

The balance of other claims on application by the tenant is dismissed for lack of sufficient or supporting evidence.

Conclusion

I grant the tenant a Monetary Order under Section 67 of the Act for the sum of **\$1190.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: March 04, 2015

Residential Tenancy Branch

