



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing deal with an application by the tenant for a monetary order and recovery of her filing fee. The tenant was represented by her sister, CL, who testified that she served the landlord with the application for dispute resolution and notice of hearing via registered letter on November 27. The landlord did not participate in the conference call hearing but as I found that she had been properly served in accordance with the provisions of the Act, the hearing proceeded in her absence.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

CL's undisputed testimony is as follows. On September 11, 2014, CL met with the landlord and on behalf of the tenant, signed a tenancy agreement which provided that the tenancy was to commence on October 16, 2014. CL transferred \$362.50 via email transfer to the landlord for a security deposit and another \$362.50 for rent for the period from October 16-31. After signing the tenancy agreement, CL expressed to the landlord a desire to add a cable TV outlet and a second telephone jack. The landlord refused to allow these alterations to the unit. On October 19, the landlord emailed CL and stated as follows:

If this is a huge issue with [the tenant] before even having met & having her move in then I am willing to return damage deposit tomorrow.

CL discussed the email with the tenant and on the same date, emailed the landlord stating as follows:

I have spoken with my sister, and read her your email. She concurs that, given the apparent limits and circumstances, it is best to cut the losses and find another rental ... Please have a bankdraft or cash in the amount of \$362.50 for tomorrow.

The landlord responded to CL on October 20, saying:

I will be keeping the damaged [*sic*] deposit until the rent for Nov. is paid & a month notice is given.

CL provided the tenant's forwarding address to the landlord by way of a letter from her attorney dated October 29, 2014.

The tenant seeks to recover the rent paid in addition to double her security deposit and the filing fee paid to bring her application.

Analysis

I accept the undisputed testimony of the tenant's agent. I find that the tenant paid \$362.50 for a security deposit, she did not occupy the rental unit and she provided her forwarding address on October 29. Section 38(1) of the Act provides that when a tenant has vacated the rental unit and provided the forwarding address in writing, the landlord has 15 days to either return the deposit or file an application for its return. In this case, the landlord did neither. I find that pursuant to section 38(6) of the Act, which provides that when a landlord fails to comply with section 38(1) they are liable for double the security deposit, the tenant is entitled to double her security deposit and I award her \$725.00.

I dismiss the claim for the return of rent for October. The landlord did not agree to return the rent and the tenant did not end the tenancy in accordance with section 45 of the Act. CL claimed that the landlord failed to provide her with keys, but the facts show that they simply had difficulty coordinating a time to meet at the rental unit.

As the tenant has been substantially successful in her claim, I find she should recover the \$50.00 filing fee and I award her that sum for a total entitlement of \$775.00. I grant the tenant a monetary order under section 67 for \$775.00. 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 \$775.00.

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: March 20, 2015

Residential Tenancy Branch

