



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to obtain a return of double the amount of his security deposit, pursuant to section 38;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. The "landlord's advocate," DK, also attended the hearing.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application") by way of registered mail in late February or early March 2015. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's Application.

The landlord testified that the tenant was served with the landlord's written evidence package on March 17, 2015, by way of registered mail. The tenant confirmed that his mother received the landlord's written evidence package and forwarded it to him but he had not yet received it. At the hearing, I advised the tenant that I would be considering the landlord's written evidence at this hearing, as the landlord served the tenant at the only address for service provided by him to the landlord. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's written evidence package on March 22, 2015, five days after its registered mailing.

Issues to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

Both parties agreed that this month to month tenancy began on June 15, 2012 and ended on December 15, 2014. Monthly rent in the amount of \$1,600.00 was payable on the 15^h day of each month, which included a \$100.00 incentive for the tenant providing his own lawn and garden maintenance. Utilities were also payable by the tenant under the tenancy agreement. A security deposit of \$800.00 was paid by the tenant and the landlord returned \$400.00 of this deposit to the tenant in January 2015. A copy of the written tenancy agreement was provided for this hearing. Two tenants were named on the tenancy agreement, including the tenant applicant at this hearing and another tenant "RM." The rental unit is a house.

Both parties agreed that a move-in condition inspection and report were completed for this tenancy. Both parties agreed that a move-out condition inspection occurred on December 12, 2014, but no report was completed. The landlord testified that she personally received the tenant's forwarding address in writing on December 12, 2014, from RM. The landlord provided a copy of this address, which was on a move-out cleaning checklist, with her written evidence for this hearing. Both parties agreed that the landlord did not have written permission from the tenant to retain any amount from his security deposit. Both parties agreed that there were no unpaid amounts owing at the end of this tenancy, including for rent or utilities. The landlord testified that she did not make an application for dispute resolution to claim any amount against the tenant's security deposit.

The tenant seeks the return of double the amount of his security deposit equaling \$1,600.00 less the \$400.00 portion return to him by the landlord, for a total of \$1,200.00. The tenant stated that the landlord did not return his security deposit in full or make an application within 15 days of the end of this tenancy. The tenant also seeks to recover the \$50.00 filing fee for his Application.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues with respect to this entire tenancy:

1. Both parties agreed that all monetary issues arising out of this tenancy will be satisfied by the landlord's agreement to pay the tenant \$450.00 by way of certified cheque to be sent out by registered mail by April 2, 2015;
2. Both parties agreed that this settlement agreement constitutes a final and binding resolution of the tenant's Application at this hearing and any issues arising out of this tenancy;
3. Both parties agreed that this settlement agreement constitutes a final and binding resolution of the landlord's potential monetary claims against the tenant arising out of this tenancy;
4. Both parties agreed that they will not initiate any further claims or applications against each other at the Residential Tenancy Branch, with respect to any issues arising out of this tenancy.

These particulars comprise a full and final settlement of all aspects of this dispute and arising out of this tenancy. Both parties gave verbal sworn affirmation at the hearing that they understood and agreed to the above settlement terms, free of any duress or coercion. Both parties testified that they understood and agreed to these settlement terms as legal, final, binding and enforceable, settling all aspects of this dispute and arising out of this tenancy.

Conclusion

In order to implement the above settlement reached between the parties, I issue a monetary Order in the tenant's favour in the amount of \$450.00. I deliver this Order to the tenant in support of the above agreement for use **only** in the event that the landlord fails to pay \$450.00 to the tenant by way of registered mail to be sent out by April 2, 2015. The tenant is provided with this Order in the above terms and the landlord must be served with a copy of this Order in the event that the landlord fails to pay \$450.00 to the tenant by way of registered mail to be sent out by April 2, 2015. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: April 02, 2015

Residential Tenancy Branch

