



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUNWOOD MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order to recover the security deposit and to recover the filing fee from the landlord for the cost of this application.

The tenants agents and the landlord's agent attended the conference call hearing and gave sworn testimony. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord's agent confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

The landlord's agent advised me there was an error in the landlord's correct name. The parties did not raise any objections to the landlord's name being corrected and this has now been amended. The landlord's agent named on this application also stated that he is no longer an agent for the landlord. Consequently any Orders issued will be in the landlord's name as amended.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order to recover the security deposit?

Background and Evidence

The parties in attendance agreed that this month to month tenancy started around September, 2011. Rent for this unit was \$1,995.00 per month and was due on the first day of each month in advance. The tenant paid a security deposit of \$997.50 at the start of the tenancy. The tenancy ended on November 30, 2013. The tenant provided a forwarding address in writing on March 25, 2014.

The tenant's agents testified that the landlord failed to return the security deposit within 15 days of receiving the tenant's forwarding address in writing. A copy of the letter has been provided in evidence and was addressed to an agent for the landlord. The tenant therefore seeks to recover the security deposit from the landlords. The tenant's agents testified that they waive the tenant's right to have the security deposit doubled and only seek to recover the original amount of \$997.50. The tenant's agent testified that the landlord was not given written permission to keep all or part of the security deposit.

The tenant's agents testified that the tenant had filed a previous application to recover the security deposit. At that hearing they determined that they had an incorrect name for the landlord. The tenant's agents withdrew the tenant's application at that time and the tenant was given leave to reapply. The tenant seeks to recover the registered mail costs for that hearing of \$10.52 and the \$50.00 filing fee.

The tenant's agents testified that the tenant paid \$34.02 in registered mail costs for this hearing package to be sent. The tenant seeks to recover that cost from the landlord along with the filing fee for this proceeding of \$50.00

The landlord's agent agreed that the other agent for the landlord likely received the tenant's forwarding address in writing. The tenant's security deposit was not returned to the tenant as some damage was found in the unit. The tenant was sent information relating to this damage. The landlord's agent disputed the tenant's claim to recover the security deposit.

Analysis

Section 38(1) of the *Residential Tenancy Act (Act)* says that a landlord has 15 days from the end of the tenancy or from the date that the landlord receives the tenant's forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If the landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant unless the tenant waives their right to this provision.

Therefore, based on the above and the evidence presented I find that the landlord did receive the tenant's forwarding address in writing on March 25, 2014. As a result, the landlords had until April 09, 2014 to return all of the tenant's security deposit or file a claim to keep it. There is no evidence before me to show that the landlord did file a claim to keep the security deposit within 15 days of receiving the tenant's forwarding address. Therefore, the tenant has established a claim for the return of double the security deposit; however, at the hearing the tenant's agents waived the tenant's right to the doubling provision. Consequently, I find the tenant is entitled to recover the security deposit of **\$997.50**, pursuant to section 38(6)(b) of the *Act*.

With regard to the tenant's claim to recover registered mail costs for the previous hearing package and for this hearing package; there is no provision under the *Act* for costs of this nature to be awarded to a party. This section of the tenant's claim is therefore dismissed.

With regard to the tenant's claim to recover the filing fee from the previous hearing; as the tenant's agents withdrew the tenant's application at the hearing they are not entitled to recover the filing fee for that hearing.

The tenant is entitled to recover the **\$50.00** filing fee for this hearing from the landlord pursuant to s. 72(1) of the *Act*.

Conclusion

For the reasons set out above, I grant the tenant a Monetary Order pursuant to s. 38(6)(b), 67 and 72(1) of the *Act* in the amount of **\$1,047.50**. This Order must be served on the Respondent and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondent fails to comply with the Order.

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: June 23, 2015

Residential Tenancy Branch

