



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was original convened on March 10, 2015. A decision was rendered on March 12, 2015. The tenant applied for a Review Consideration of that decision and her request was granted on April 09, 2015. A Review Hearing was convened today to either, confirm, vary, or set aside the original decision. The Review Hearing was convened by way of conference call in response to the tenants' application for a Monetary Order to recover double the security deposit; and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlord attended the conference call hearing and gave sworn testimony. The parties provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord submitted that he only received 15 pages of the tenants 23 page evidence package as discussed at the original hearing. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

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

Background and Evidence

The parties agreed that this tenancy started on July 01, 2012 for an initial fixed term of one year with the option of continuing as a month to month tenancy. The tenancy ended on June 30, 2014. Rent for this unit was \$725.00 plus utilities of \$125.00 per month and these payments were due on the first day of each month in advance. The tenant paid a security deposit of \$362.50 on July 01, 2012.

The tenant testified that the landlord failed to return the security deposit within 15 days of receiving the tenant's forwarding address. The tenants testified that landlord and tenant always communicated either by phone or through email. The tenant had never met the landlord. The forwarding address was provided to the landlord by email on July 01, 2013. The tenants have provided a copy of the email in documentary evidence and an email from the landlord sent on the same day, an hour later, saying thank you. The tenant therefore seeks to exercise their right to recover double the security deposit from the landlord. The tenant testified that the landlord was not given written permission to keep all or part of the security deposit. The tenant testified that written notice to end the tenancy was provided to the landlords on May 22, 2013 and this was left in the unit and collected by someone working for the landlord. A confirmation email was also sent to the landlord on June 07, 2014.

The landlord testified that he had looked through his emails and could not find a copy of the email sent by the tenant with her forwarding address. The landlord referred to the *Residential Tenancy Act (Act)* which states that a forwarding address must be given in writing and it does not specify that a forwarding address can be given through electronic means.

The landlord testified that the tenant had sent the landlord an email on June 07, 2013 giving Notice to end the tenancy at the end of June. The landlord disputed that he had received written notice from the tenant on May 22, 2013. The landlord testified that the security deposit was retained due to late notice being given by the tenant and because the tenant failed to clean the carpet or remove garbage from the unit. The landlord made attempts to reach a settlement with the tenant during the hearing; however, the tenant declined the landlord's settlement offer.

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 tenants' forwarding address in writing to either return the security deposit to the tenants or to make a claim against it by applying for Dispute Resolution. If the landlords do not do either of these things and do not have the written consent of the tenants to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlords must pay double the amount of the security deposit to the tenants.

The landlord argued that the *Act* does not allow a tenant to provide a forwarding address by e-mail but rather states it must be in writing. I have considered the landlord's argument in this matter and find the landlord did acknowledge that he had received the tenant's email containing her forwarding address one hour after the email was sent to the landlord. Furthermore, I find that email was the preferred method for communication between the parties. I therefore deem that for the purpose of the *Act* the landlord did receive the tenant's forwarding address in writing on July 01, 2013.

As a result, the landlord had until July 16, 2013 to return all of the tenant's security deposit or file a claim to keep it. As the landlord failed to do so, the tenant has established a claim for the return of double the security deposit to an amount of **\$725.00**, pursuant to section 38(6)(b) of the *Act*. There has been no accrued interest on the security deposit for the term of the tenancy.

As the tenant's claim has merit I find the tenant is also entitled to recover the **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*.

I refer the parties to s.82 of the *Act* which states:

82 (1) Unless the director dismisses or refuses to consider an application for a review under section 81, the director must review the decision or order.

(2) The director may conduct a review

(a) based solely on the record of the original dispute resolution proceeding and the written submissions of the parties, if any,

(b) by reconvening the original hearing, or

(c) by holding a new hearing.

(3) Following the review, the director may confirm, vary or set aside the original decision or order.

Conclusion

I HEREBY set aside the original decision made on March 12, 2015.

I HEREBY FIND in favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$775.00**. The Order must be served on the Respondent. If the Respondent fails to comply with the Order, the Order is enforceable through the Provincial Court 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: June 01, 2015

Residential Tenancy Branch

