



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 by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant for the return of double her security deposit and to recover her filing fee from the Landlord.

The Landlord, the Co-Landlord, and the Tenant appeared for the hearing and provided affirmed testimony. The Tenant testified that she served the Landlord with the Notice of Hearing documents, a copy of her Application, and her documentary evidence by registered mail on November 8, 2014. The Landlord confirmed receipt of these documents on November 13, 2014. Therefore, I find the Tenant effected service of the documents pursuant to Section 89(1) (c) of the *Residential Tenancy Act* (the “Act”).

The Co-Landlord testified that she had submitted evidence prior to the hearing. While this evidence was not before me, the electronic records for this file indicated that the Landlord did submit evidence to the Residential Tenancy Branch which was received on June 17, 2015. The Co-Landlord testified that she had also provided a copy to the Tenant by regular mail. The Tenant denied being served a copy of this evidence.

The Landlord explained that the evidence related to a letter which she sent to the Tenant at the end of January 2015 explaining the reasons why they had not returned the Tenant’s security deposit. The Landlord failed to provide sufficient evidence to prove that the Tenant had been sent a copy of the same documents sent to the Residential Tenancy Branch. Therefore, I declined to consider adjourning the hearing in order for this evidence to be exchanged.

I also determined that the evidence described by the Landlord during the hearing would not have affected the outcome of the hearing even if it were to be considered, as outlined below. However, the Landlord was not prohibited from providing the evidence in oral testimony.

Issue(s) to be Decided

- Is the Tenant entitled to the return of double the security deposit?

Background and Evidence

Both parties agreed that this tenancy started on July 1, 2009 and was for a fixed term of one year after which it continued on a month to month basis. The Tenant paid the Landlord \$725.00 as a security deposit on June 26, 2009, which the Landlord still retains.

The tenancy ended when the Tenant moved out of the rental unit at the end of December 2013. Rent under the written tenancy agreement was payable by the Tenant at the start of the tenancy in the amount of \$1,450.00 on the first day of each month. The Rent was increased during the tenancy and at the end of the tenancy rent was payable in the amount of \$1,600.00.

The Tenant testified that she served the Landlord with a forwarding address on a written letter on December 22, 2013 before the tenancy ended. The Tenant provided a copy of this letter into evidence prior to the hearing. The Co-Landlord testified that they were on vacation at the time the letter was mailed to their home and did not get back until the end of January 2014 at which point they received the Tenant's letter containing her forwarding address.

The Co-Landlord testified that they had not returned the Tenant's security deposit because the Tenant had failed to pay utilities under the agreement. The Co-Landlord testified that she sent the Tenant a letter to this effect in the middle of February 2014. The Tenant denied receiving such a letter from the Landlord.

The Landlord was informed of the provisions of the Act in relation to the return of the Tenant's security deposit. The Landlord confirmed that they had not made an Application to keep the Tenant's security deposit as required by the Act; however, they felt they had grounds to keep the Tenant's security deposit for the reasons cited during the hearing.

The Landlord questioned what rights they had to recover their utility costs from the Tenant. The Landlords were informed that they were at liberty to make an Application and prove these costs in a future hearing but these matters could not be decided upon during this hearing as they were not issues before me.

Analysis

Section 38(1) of the Act states that, within 15 days after the latter of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application to claim against it.

I accept the undisputed evidence that this tenancy terminated at the end of December 2014. I also accept that the Tenant provided the Landlord with a forwarding address in writing as confirmed by the Landlord during the hearing. However, there is no evidence before me that the Landlord made an Application within 15 days of receiving the Tenant's forwarding address. I also find that the Landlord had no authority under the Act to decide of his own accord to retain the security deposit for the alleged costs.

Section 38(6) of the Act stipulates that if a landlord does not comply with Section 38(1) of the Act, the landlord must pay the tenant double the amount of the security deposit. Based on the foregoing, I find the Tenant is entitled to double the return of her security deposit in the amount of **\$1,450.00** (\$725.00 x 2).

As the Tenant has been successful in this matter, I also award the Tenant the filing fee of **\$50.00** pursuant to Section 72(1) of the Act. Therefore, the total amount awarded to the Tenant is **\$1,500.00**. The Tenant is issued with a Monetary Order for this amount. This order must be served on the Landlord and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The Landlord has breached the Act by failing to deal properly with the Tenant's security deposit. Therefore, the Tenant's claim for the return of double the security deposit and recovery of her filing fee is granted in the amount of \$1,500.00

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: June 25, 2015

Residential Tenancy Branch

