



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order to recover double the security deposit and for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement.

The tenant and landlord 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 confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

Issue(s) to be Decided

- Is the tenant entitled to recover the security deposit?
- Is the tenant entitled to have the security deposit doubled?

Background and Evidence

The parties agreed that this month to month tenancy started on October 24, 2013. Rent for this unit was \$350.00 per month due on the first of each month. The tenant paid a security deposit of \$175.00 on November 15, 2013. The tenancy ended on May 30, 2014. The landlord did not complete a move in or move out condition inspection report of the unit. The tenant mailed his forwarding address in writing to the landlord on October 29, 2014.

The tenant testified that the landlord has failed to return the security deposit within 15 days of receiving the tenant's forwarding address in writing. The tenant testifies that the forwarding address was provided to the landlord by mail. The tenant testified that the landlord did not give the tenant opportunity to attend a move in or a move out condition inspection of the unit. The tenant testified that his aunt and Uncle came to collect the tenant's belongings, clean the unit and do a move out inspection with the landlord; however, the landlord kept the tenants Aunt and Uncle at the door and would not allow them access to the tenant's unit.

The tenant testified that he has not given the landlord permission to keep all or part of his security deposit and as the landlord has failed to return the security deposit, the tenant seeks to have the security deposit doubled.

The landlord agreed that they did receive the tenant's forwarding address in writing and testified that this letter was postmarked November 29, 2014. The landlord testified that the tenant did not pack up his room and this had to be done by the landlord, the unit and carpet had to be cleaned and as the tenant did not return the keys the landlord had to change the locks. Due to this the landlord thought it was fair to keep the tenant's security deposit of \$175.00.

Analysis

Section 38(1) of the *Residential Tenancy Act (Act)* says that a landlord has 15 days from the end of the tenancy agreement 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 a 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.

Sections 23 and 35(3) of the *Act* require a landlord to complete a condition inspection report at the beginning and end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign the condition inspection report. In failing to complete the condition inspection when the tenant moved in and out, I find the landlord

contravened s.23 and 35(3) of the *Act*. Consequently, s. 24(2) and s. 36(2)(a) of the *Act* says that the landlord's right to claim against the security deposit for damages is extinguished.

When a landlord's right to claim against the security deposit has been extinguished the landlord must return the security deposit to the tenant within 15 days of either the end of the tenancy or the date the tenant gives the landlord their forwarding address in writing.

Therefore, based on the above and the evidence presented I find that the landlord did receive the tenant's forwarding address in writing on December 04, 2014, five days after it was posted. As a result, the landlord had until December 19, 2014 to return all of the tenant's security deposit. 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 **\$350.00**, 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.

Conclusion

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 **\$350.00**. 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: July 13, 2015

Residential Tenancy Branch

