



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 for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant; the landlord and her translator.

The landlord testified that she had submitted evidence the week prior to the hearing, however, I had not received any evidence from the landlord. I note that the day following the hearing the landlord's evidence was provided to me.

However, as per Residential Tenancy Branch Rule of Procedure 3.15 any evidence that a respondent, in this case the landlord, wishes to rely upon must be served to the applicant and the Residential Tenancy Branch as soon as possible or at the very latest not less than 7 days prior to the hearing.

Based on the landlord's submission, I find she has failed to submit evidence either as soon as possible or not less than 7 days prior to the hearing. As a result, I have not considered the landlord's documentary evidence in this decision. I have only considered her verbal testimony.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for unpaid rent; for all or part of the key deposit and security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenant has submitted into evidence a copy of a tenancy agreement signed by the parties on June 9, 2014 for a 1 year fixed term tenancy beginning on June 1, 2014 for a monthly rent of \$1,650.00 due on the 1st of each month with a security deposit of \$825.00 and a key deposit of \$200.00 paid.

The tenant also submitted a mutual agreement to end tenancy confirming the tenant was to vacate the rental unit no later than 2:00 p.m. on March 30, 2015.

The tenant testified that he had originally verbally agreed the landlord could withhold \$100.00 from the security deposit and \$100.00 from the key deposit.

The tenant submits that he provided the landlord with his forwarding address in writing on the day they signed the mutual agreement to end the tenancy at the end of the tenancy or March 30, 2015.

The landlord testified that she did not receive the tenant's forwarding address until she received his Application for Dispute Resolution in the later part of May 2015. The landlord submits that she had tried to contact the tenant to discuss the additional charges she wanted for cleaning and repairs but the tenant told her it was too late because he had already applied for this hearing.

The landlord submitted that she did nothing else until she started to prepare for this hearing, at which time she sought assistance from the person who was translating for her during the hearing. The landlord confirmed that she, at no time, contacted the Residential Tenancy Branch to find out what she should do about the security deposit.

Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit less any mutually agreed upon amounts or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

When one party to a dispute provides testimony regarding circumstances related to a tenancy and the other party provides an equally plausible account of those

circumstances, the party making the claim has the burden of providing additional evidence to support their position.

In this case, the burden is on the tenant to establish when he provided the landlord with his forwarding address. As the tenant has provided no corroborating evidence to establish that he provided his forwarding address on March 30, 2015, I find the tenant has failed to establish this as fact.

As such, I find the landlord received the tenant's forwarding address when she received his Application for Dispute Resolution. Tracking information from Canada Post shows the landlord received the tenant's Application for Dispute Resolution and hearing package on May 23, 2015. As such, I find the landlord had until June 7, 2015 to either return the deposit less any mutually agreed upon amounts or file her own Application for Dispute Resolution.

While the landlord testified that she did not contact the Residential Tenancy Branch to find out what her obligations were I note that the tenancy agreement itself specifically identifies that the landlord must either return the deposit or file an Application to claim against the deposit within 15 days of the end of the tenancy and receipt of the tenant's forwarding address.

As such, I find the landlord should have already been aware of her obligations in regard to the disposition of the security deposit. Therefore, as the landlord has not returned the deposit or filed an Application to claim against it, I find the tenant is entitled to double the amount of the deposit, pursuant to Section 38(6) of the *Act*.

As to the actual amount of the security deposit that should be doubled, I note that Section 38(1) requires that any deductions from the returned deposit the tenant authorizes must be done in writing. However, as the tenant acknowledged in his testimony that he agreed the landlord could retain \$100.00 from the security deposit I find this has the same effect as a written agreement for the landlord to withhold \$100.00.

As such, I find the amount of the security deposit to be double is \$825.00 less the \$100.00 agreed deduction or \$725.00 for an award of \$1,450.00.

As to the return of the key deposit, I note that a key deposit is not collected as part of security deposit and as such, is not entitled to the doubling provision allowed for security deposits.

However, based on the testimony of both parties, I find the tenant agreed the landlord could retain \$100.00 of this deposit. As such, I order the landlord must return the balance of \$100.00 for the deposit.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$1,600.00** comprised of \$1,450.00 double security deposit; \$100.00 balance of key deposit and the \$50.00 fee paid by the tenant for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: October 22, 2015

Residential Tenancy Branch

