



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF, O

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 double the return of the security deposit, and to recover the filing fee from the Landlord.

The Tenant appeared for the hearing along with an advocate who assisted the Tenant and also acted as a witness during the hearing. The Landlord also appeared for the hearing. All the parties provided affirmed testimony. The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided.

Preliminary Issues

The Landlord confirmed personal receipt of the Tenant’s Application and accompanying pages of documentary evidence. When the Landlord was asked whether he had provided any evidence prior to the hearing, he explained that he had faxed in evidence to the Residential Tenancy Branch two weeks ago. However, no such evidence was before me and the electronic records for this file do not indicate any receipt of fax evidence from the Landlord. The Tenant also confirmed that she had not received any evidence from the Landlord prior to the hearing.

Therefore, I was not satisfied that the Landlord had served both the Residential Tenancy Branch and the Tenant with any evidence prior to the hearing. The hearing continued and I informed the Landlord that he was at liberty to give any written evidence he relied upon as oral testimony.

The Tenant wrote on her Application that there was a previous hearing between the same parties; the file number for which appears on the front page of this decision. In

that May 5, 2015 hearing, the Landlord failed to attend and the following findings on the Tenant's previous Application for the return of the security deposit were made:

"On the basis of the undisputed evidence, I find that the Landlord and the Tenant entered into a verbal tenancy agreement for a tenancy that was to begin on September 01, 2014.

On the basis of the undisputed evidence, I find that the Tenant was unable to move into the rental unit on September 01, 2014 as the Landlord refused to provide them with access to the rental unit. I therefore find, pursuant to section 44(1)(f) of the Act, that this tenancy agreement ended before it was scheduled to begin on September 01, 2014."

[Reproduced as written]

However, the previous Arbitrator was unable to award the Tenant the return of her security deposit because she had failed to satisfy the requirement of the Act to provide the Landlord with a forwarding address in writing. As a result, the previous Arbitrator dismissed the Tenant's Application but provided leave to re-apply. This hearing deals with the Tenant's subsequent Application.

Issue(s) to be Decided

- Did the Tenant provide the Landlord with a forwarding address in writing?
- Is the Tenant entitled to the return of double the security deposit?

Background and Evidence

Both parties confirmed on July 6, 2014 the Tenant paid the Landlord ~~\$1,400.00~~ **\$1,700.00** as a security deposit. The Landlord confirmed receipt of the Tenant's forwarding address which was personally served to the Landlord by the Tenant and the witness on May 21, 2015. When the Landlord was asked why he had not returned the Tenant's security deposit, the Landlord testified that the Tenant was supposed to be moving in on September 1, 2015 **2014** but failed to do so, therefore she should not be entitled to the return of her security deposit. The Landlord confirmed that while there was no written tenancy agreement, there was an oral agreement for the Tenant to rent out the unit.

Analysis

In the previous hearing of May 5, 2015 that Arbitrator made a finding that the parties had engaged into an oral tenancy agreement and that the tenancy had ended on

September 1, 2015 ~~2015~~ **2014**. In this hearing, the parties agreed that an oral tenancy agreement existed between them even though the Tenant did not take occupancy of the rental unit.

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. The Landlord confirmed personal receipt of the Tenant's forwarding address on May 21, 2015 and failed to make an Application to keep the Tenant's security deposit or return it back to her. Therefore, I find that the Landlord failed to comply with Section 38(1) of the Act.

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 deposit. Based on the foregoing, I find the Tenant is entitled to double the return of the security deposit in the amount of **\$3,400.00**. 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 **\$3,450.00**.

The Tenant is issued with a Monetary Order which must be served on the Landlord. The Tenant may then file and enforce this order in the Provincial Court (Small Claims) as an order of that court if the Landlord fails to make payment in accordance with the Tenant's written instructions. Copies of the order are attached to the Tenant's copy of this decision.

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 the filing fee is granted in the amount of \$3,450.00.

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: November 26, 2015

Residential Tenancy Branch

DECISION AMENDED PURSUANT TO SECTION 78(1)(A) AND 78(1.1) (A) OF THE RESIDENTIAL TENANCY ACT ON DECEMBER 14, 2015 AT THE PLACES INDICATED IN **UNDERLINED** ON THE FRONT PAGE, PAGE 2, AND PAGE 3.

