



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 and the landlord.

During the hearing I explained several times that this hearing was held specifically to determine if the landlord had complied with his obligations under the tenancy agreement and the *Residential Tenancy Act (Act)* to disperse the security deposit at the end of the tenancy.

I explained that since this was the tenant's Application for return of the deposit, based on the landlord's obligations to do so, the condition of the rental unit at the end of the tenancy is not germane to the adjudication of this Application.

I did advise the parties that each of the parties has up to 2 years to file a claim against the other party of the tenancy if they believe they have suffered a loss as a result of the tenancy.

I note the landlord repeatedly provided testimony regarding the condition of the rental unit at the end of the tenancy and his need to withhold the security deposit to pay for repairs and cleaning of the property.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for return of the 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 *Act*.

Background and Evidence

Both parties submitted copies of a tenancy agreement signed by the parties on April 4, 2014 for a 1 year fixed term tenancy beginning on May 1, 2014 that converted to a month to month tenancy on May 1, 2015 for a monthly rent of \$1,750.00 due on the 1st of each month with a security deposit of \$875.00 paid. The parties agreed the tenancy ended on May 31, 2015.

The tenant testified that she had provided the landlord with her forwarding address on June 1, 2015 by text message. The landlord disputed receiving the tenant's forwarding address by text on June 1, 2015. He states that he did not receive the tenant's forwarding address until he received her Application for Dispute Resolution. He was not sure when he received these documents but did confirm it was sometime in September 2015.

The landlord testified that they parties had exchanged several text messages after the condition inspection was completed. He stated that he had forwarded several pictures of the condition of the rental unit to the tenant and told her he would have to keep her deposit to pay for these items and that the tenant responded "ok". The landlord did not provide copies of any of these text messages.

The tenant testified that she, at no time, provided authorization in writing to the landlord that he could retain her security deposit.

Analysis

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.

While neither party has provided me with copies of the text messages they have both referred to in their respective positions I find that neither party has provided any corroborating evidence to support these positions.

Specifically, the tenant has failed to provide any documentary evidence to confirm that she provided her forwarding address in writing on June 1, 2015 by text message and the landlord disputes this. As such, I find the tenant has failed to provide sufficient evidence to establish she provided the address by June 1, 2015.

However, as per the landlord's own testimony, I find the landlord received the tenant's forwarding address when he received her Application for Dispute Resolution. As the landlord cannot confirm when he received it other than no later than September 30, 2015, I find the landlord had received the tenant's forwarding address by September 30, 2015.

Additionally, the landlord has failed to provide any documentary evidence to confirm that the tenant provided him with authorisation to retain any portion of the security deposit. As such, I find the landlord had no authority under the *Act* or tenancy agreement to retain any portion of the security deposit.

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 amounts mutually agreed upon (in writing) 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.

As there is no evidence of an agreement in writing that the tenant agreed to allow the landlord to retain any portion of the tenancy agreement I find the landlord was obligated to return the deposit or file an Application for Dispute Resolution seeking to claim against the deposit.

In conjunction with my finding above that the landlord received the tenant's forwarding address no later than September 30, 2015, I find the landlord had until October 15, 2015 to either return the deposit in full or to file his own Application for Dispute Resolution seeking to retain the deposit.

As the landlord has failed to file any such Application, I find the landlord has failed to comply with his obligations under Section 38(1) and the tenant is entitled to double the amount of the deposit, pursuant to Section 38(6).

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,800.00** comprised of \$1,750.00 double the security 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: December 1, 2015

Residential Tenancy Branch

