



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROCKWELL MANAGEMENT INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

This is an application by the Tenant for a Monetary Order for return of double the security deposit, the interest and the filing fee for the claim.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on July 7, 2015, a Canada post tracking number was provided as evidence of service which indicated that the documents were signed for on July 8, 2015 the Landlord did not appear.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the Landlord has been duly served in accordance with the Act.

The Tenant appeared, gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

1. Is the Tenant entitled to a Monetary Order for return of double the security deposit?
2. Should the Tenant recover the filing fee?

Background and Evidence

The Tenant testified that the tenancy began on October 1, 2014. The monthly rent was \$850.00 and the Tenant paid a security deposit of \$425.00 and a pet damage deposit of \$425.00 for a total of \$850.00 (the "Deposits").

The Tenant testified that the management changed on December 16, 2014 from a corporate Landlord, L.P.M., to R.M. Inc., who is the named Landlord on the Tenant's Application for Dispute Resolution.

The Tenant vacated the premises on June 1, 2015. She testified that on May 1, 2015, a month prior to vacating the rental unit she provided the Landlord's property manager with a written notice of the forwarding address to return the security deposit to, and did not sign over a portion of the security deposit. The Tenant testified that she also provided her forwarding address to the Landlord on the move out condition inspection report.

Analysis

Based on the above, the Tenant's undisputed testimony and evidence, and on a balance of probabilities, I find as follows.

There was no evidence to show that the Tenant had agreed, in writing, that the Landlord could retain the Deposits. There was also no evidence to show that the Landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the Deposits

The Deposits are held in trust for the Tenant by the Landlord. The Landlord may only keep all or a portion of the Deposits through the authority of the *Residential Tenancy Act*, such as an Order from an Arbitrator; here the Landlord did not have any such authority.

Section 38(6) provides that if a Landlord does not comply with section 38(1), the Landlord must pay the Tenant double the amount of the Deposits. The legislation does not provide any flexibility on this issue.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenant the sum of \$1,750.00, comprised of double the pet damage deposit and security deposit (\$425.00 and \$425.00 respectively) and the \$50.00 fee for filing this Application.

The Tenant is given a formal Order in the above terms and must serve the Landlord with a copy of this Order as soon as possible. Should the Landlord fail to comply with this Order, the Order may be filed in the small claims division of the Provincial Court and enforced as an Order of that court.

Conclusion

The Tenant's Application for double the security deposit is granted and, having been substantially successful, she is entitled to recover the filing fee.

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 21, 2015

Residential Tenancy Branch

