



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Action Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNR, MNSD

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. For more time to apply to cancel a notice to end tenancy – Section 66;
2. An Order cancelling a notice to end tenancy – Section 46; and
3. An Order for the return of the security deposit – Section 38.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Parties agreed that the rent has been paid and the tenancy has been reinstated. I therefore dismiss the Tenant’s claims in relation to the notice to end tenancy.

The Landlord is aware that the claim for the return of the security deposit contained in the Tenant’s application is in relation to the previous tenancy with the same Landlord. The Landlord is agreeable to dealing with this dispute today. I therefore amend the application to include a second dispute address from which the claim for return of the security deposit is being made.

Issue(s) to be Decided

Did the Landlord provide two opportunities for the Tenant to attend a move out inspection?
Is the Tenant entitled to return of double the security deposit?

Background and Evidence

The tenancy started on August 1, 2015 and ended on October 31, 2015. At the outset of the tenancy the Landlord collected \$500.00 as a security deposit. On October 30, 2015 the Parties entered into a tenancy agreement for another unit with the same Landlord.

The Landlord states that the Tenant was given two opportunities for a move-out inspection of the first rental unit when a notice was posted on the first rental unit door on October 31, 2015. The Landlord states that there were multiple conversations with the Tenant after this date but that the Landlord has no record of these conversations. The Landlord states that they gave opportunities again on November 2 and 5, 2015 but no times were offered. The Landlord states that several notices were left on the first rental unit after the Tenant had moved out as the Tenant still had access to that unit.

The Tenant states that it was only given one opportunity to do a move-out inspection on November 2, 2015 but no time was ever provided to the Tenant for that date. The Tenant states that it was never given any notice on the door of either the dispute unit or the new unit about a move-out inspection. The Tenant states that she did a move-in inspection for the new unit on October 30, 2015 but there was no mention of a move-out for the old unit. The Tenant states that the Landlord never gave the Tenant a definitive date or time to attend any move-out inspection.

Analysis

Section 35 of the Act provides that a landlord must offer a tenant at least 2 opportunities, as prescribed, for a move-out inspection. Section 36 of the Act provides that a landlord's right to claim against the security deposit is extinguished where such opportunities are not provided. Although the Landlord indicates that two opportunities were provided to conduct a move-out inspection by placing a notice on the door prior to the end of the tenancy the Tenant denies receiving any notices and the remaining text and oral evidence of the Landlord supports the Tenant's evidence that no fixed times were ever provided to the Tenant. As the Landlord has nothing to support that the Tenant was given the first notice to conduct an inspection and considering the remaining vague evidence in relation to offers for an inspection, I prefer the Tenant's evidence and find on a balance of probabilities that the Landlord did not offer two opportunities to the Tenant. As such I find that the Landlord's right to claim against the security

deposit was extinguished at move-out and that the Landlord was required to return the deposit to the Tenant at the end of the tenancy.

Section 38 of the Act provides that within 15 days after the later 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 for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit.

Given the undisputed evidence that the Landlord entered into a written tenancy agreement with the Tenant for the new unit, I find that the Landlord had the Tenant's forwarding address prior to the end of the tenancy. As the Landlord did not return the security deposit and as the Landlord could not have made an application to claim against the security deposit I find that the Landlord must now pay the Tenant double the security deposit in the amount of \$1,000.00 plus zero interest.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,000.00**. If necessary, this order may be filed in the Small Claims Court and 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: January 22, 2016

Residential Tenancy Branch

