



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant, and one brought by the landlord(s). Both files were to be heard together however, even though I waited until well past the time at which the hearing was to start, the landlords did not join the conference call that was set up for the hearing.

The landlord's application is therefore dismissed without leave to reapply, and I proceeded with the tenant's application in the landlord's absence.

The tenant's application is a request for a monetary Order in the amount of \$2281.00 and a request for recovery of her \$50.00 filing fee.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the tenant the opportunity to give her evidence orally.

The tenant's testimony was taken under affirmation.

Issue(s) to be Decided

The issues to be decided are:

- Whether or not the applicant has the right to an Order for return of double her security deposit.
- Whether or not the applicant has the right to an Order for reimbursement of the cost of possible water.

Background and Evidence

The tenant testified that she moved into the rental unit on February 28, 2015 and had paid a combined security/pet deposit of \$1050.00 on February 7, 2015.

The tenant further testified that she believed the landlord was breaching the tenancy agreement by not providing a house that met reasonable standards because it had infestations of insects and no potable water.

The tenant further testified that the landlord frequently blocked the driveway and access to her home, and there was excessive noise from the tenant in the suite below and the landlord failed to deal with those problems.

The tenant testified that as a result of the breach she gave a landlord Notice to End Tenancy on May 28, 2015 stating that she would be vacating the rental unit on June 30, 2015, and included with that notice she provided a forwarding address requesting that her security deposit be forwarded to her.

The tenant further testified that at no time did she give the landlord any permission to keep any or all of her security deposit and therefore she is requesting an Order for return of that deposit double.

The tenant further testified that on the tenancy agreement it states that water is included in the rent and therefore since the household water is not potable, as is also stated on the tenancy agreement, she believes the landlord should be paying for potable water.

Analysis

It is my decision that the tenant does have the right to an Order for the return of her security/pet deposit totaling \$1050.00, because the landlord has failed to return the deposit, and the landlord's application to retain the deposit has been dismissed. I will not however Order double the deposit because the landlord applied for dispute resolution to retain the deposit within the 15 day time limit required under section 38 of Residential Tenancy Act which states:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

This tenancy ended on June 30, 2015, and the landlord applied for dispute resolution on July 15, 2015 and therefore was within the 15 day time frame.

I will not allow the applicants claim for the purchase of potable water because right on the tenancy agreement, signed by the tenant on February 7, 2015, it states "household

water is not potable". The tenant was therefore aware that the water was not potable and there is nothing in the tenancy agreement that states that the landlord will provide potable water.

Having allowed a large portion of the tenant's claim, I also Order that the landlord bear the \$50.00 cost of the filing fee paid by the tenant.

Conclusion

Pursuant to sections 38 and 67 of the Residential Tenancy Act, I have issued an Order for the landlord to pay \$1100.00 to the tenant, and the remainder of the tenants claim is dismissed without leave to reapply.

As stated above, the landlord's application is dismissed in full without leave to reapply.

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 05, 2016

Residential Tenancy Branch

