



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD FF

Introduction

Both parties attended the hearing and the landlord confirmed he received the tenant's Application for Dispute Resolution by registered mail. These parties have had several hearings as described below. In this hearing the tenant applies pursuant to the *Residential Tenancy Act* (the Act) for an order that the landlord return double the security deposit pursuant to Section 38 and to recover the filing fee for this application.

History:

An original hearing was held on September 10, 2015, then a review was done and a review hearing was held on January 6, 2016. In each of these hearings held under the same file number the security deposit was referenced as described below.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that she is entitled to the return of double the security deposit according to section 38 of the Act and to recover filing fees?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. Both parties agreed the tenant had paid deposits for security and pet totalling \$1725. She gave notice on February 14, 2015 to vacate on April 1, 2015 and the landlord re-rented for May 1, 2015. The fixed term lease did not expire until November 30, 2015. She said she provided their forwarding address in writing on March 19, 2015. She said her deposit has never been returned and she gave no permission to retain any of it.

The landlord said this is the third time this matter has been before the Residential Tenancy Branch. The tenant interjected and said that the other hearings had nothing to do with this matter. The landlord gave me the file number of the other hearings and I agreed to read the Decisions and make my Decision after seeing if they pertained to this matter.

Upon reading the Decisions, I find the tenant was served with the Notice of the original hearing on April 10, 2015. In that Decision, the security and pet damage deposits were applied to the amount found owing to the landlord. A Review Hearing was granted on November 17, 2015 and held on January 6, 2016. The Decision in the Review Hearing applied the tenant's deposits totalling \$1725 to the amounts awarded to the landlord and found the landlord was still owed \$450. The Decision dated January 6, 2016 stated it was 'final and binding on both parties'.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis:

The Residential Tenancy Act provides:

Return of security deposit and pet damage deposit

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.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

In most situations, section 38(1) of the Act requires a landlord, within 15 days of the later of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an application to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the security deposit (section 38(6)).

I find in this case that section 38(1) (d) applies. I find the landlord made an Application to claim against the deposit by April 10, 2015 when it was served on the tenant by registered mail. This is well within the 15 days allowed by the Act as the evidence is the tenant vacated on April 1, 2015.

It appears the tenant misunderstood section 38 of the Act and apparently thought the date of **the hearing** had to be within 15 days of her vacating and providing her forwarding address in writing for she quoted September 10, 2015 as outside of the 15 day period. It is the date of the **Application** that is the critical date. I dismiss this Application of the tenant. I find her security deposit has been dealt with in the previous hearings and awarded to the landlord to offset the amount owing to him.

Conclusion:

I dismiss the application of the tenant in its entirety without leave to reapply. I find she is not entitled to recover the filing fee for this application as her application has no merit and is based on her misunderstanding of section 38 of the Act.

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 21, 2016

Residential Tenancy Branch

