



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with a tenant's application for return of double the security deposit. The landlord did not appear at the hearing. The tenant testified that he served the landlord with notification of this proceeding by registered mail shortly after filing this application and that the landlord had signed for the registered mail package. I requested the tenant provide the registered mail receipt, including tracking number, which he did. The tenant submitted a copy of a registered mail receipt and tracking information from the Canada Post website to show that the hearing documents were sent to the landlord via registered mail on September 4, 2015 and signed for by the landlord on September 9, 2015. I was satisfied the landlord was served with notification of this proceeding and I proceed to consider the tenant's application.

Issue(s) to be Decided

Is the tenant entitled to return of double the security deposit?

Background and Evidence

The tenant testified that he responded to an advertisement for the rental unit and paid the landlord a security deposit of \$1,000.00 on September 8, 2014. The rental unit was a room in a two-bedroom condominium that he was to share with the landlord's father. The start date for the tenancy was expected to be at the end of September 2014 but it depended upon when the current occupant of the room moved out. On September 12, 2014 the tenant advised the landlord that he would not be moving in. When the tenant enquired about return of his security deposit the landlord responded by stating that deposits are not refundable in her culture. The tenant proceeded to send emails and text messages to the landlord for return of the security deposit but it was not refunded.

The tenant provided the landlord with his forwarding address in writing by registered mail sent on January 23, 2015. The tenant provided registered mail tracking information as proof of service.

The tenant confirmed that he did not authorize the landlord to retain his security deposit in writing and the landlord did not serve him with a Landlord's Application for Dispute Resolution claiming against the security deposit.

The tenant filed a previous Application for Dispute Resolution on March 9, 2016; however, that application was dismissed with leave to reapply.

Included in the tenant's evidence was a copy of a receipt issued to the tenant by the landlord. It was written in a different language and only the amounts of 1,000 and 1,250 are obvious to me. I asked the tenant to translate the document which he did. The tenant submits that the document reads:

"On Sep 8 [the landlord] received [the tenant's] 1000 dollars deposit. The monthly rent is 1250 dollars, and the renting period is 6 months. If do not live in for 6 month, the deposit will not be refunded."

Analysis

Section 16 of the Act provides that the rights and obligations of a landlord and tenant commence when the tenancy forms. Section 20(a) of the Act also provides that a security deposit may not be collected by a landlord except when a tenancy has formed.

I accept the undisputed evidence before me that the landlord collected a security deposit from the tenant on September 8, 2014 and by collecting a security deposit I find that a tenancy agreement formed between the parties. Accordingly, I am satisfied that the parties are bound by their respective obligations under the Act.

Section 20(e) of the Act prohibits a landlord from including a term in the tenancy agreement that provides for the automatic forfeiture of a security deposit. Where a term in a tenancy agreement violates the Act, section 6 of the Act provides that the term is not enforceable. I find the last sentence of the document signed by the landlord on September 8, 2014 constitutes a term providing for automatic forfeiture of the security deposit and the term is invalid and not enforceable. Accordingly, the security deposit remained refundable as provided under section 38 of the Act.

Unless a landlord has a legal right to retain the security deposit under the Act, section 38(1) provides that a landlord must either return the security deposit to the tenant or make an Application for Dispute Resolution to claim against it within 15 days from the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing, whichever day is later. Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit.

I accept the undisputed evidence before me that the tenant notified the landlord that he would not be moving in, bringing the tenancy to an end, and that he provided the landlord with his forwarding address in writing by registered mail several months before the tenant filed this

Application. Since the tenant did not authorize the landlord to retain his deposit in writing, and the landlord did not refund the security deposit or file an Application for Dispute Resolution to claim against it within 15 days of receiving the tenant's forwarding address, I find the landlord violated section 38(1) of the Act and the landlord must now pay the tenant double the security deposit pursuant to section 38(6) of the Act. Therefore, I find the tenant entitled to return of double the security deposit and I award the tenant \$2,000.00 as requested.

I further award the tenant recovery of the \$50.00 filing fee paid for this Application.

In light of the above, I provide the tenant with a Monetary Order in the total sum of \$2,050.00 to serve and enforce upon the landlord. To enforce the Monetary Order it must be served upon the landlord and it may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The tenant has been provided a Monetary Order in the sum of \$2,050.00 for return of double the security deposit and recovery of the filing fee to serve and enforce upon the landlord.

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: March 11, 2016

Residential Tenancy Branch