



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord – MND

For the tenant – MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for a Monetary Order for damage to the unit, site or property. The tenant applied for a Monetary Order to recover the security deposit; a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The hearing went ahead as scheduled the tenant dialed into the conference call. The telephone line remained open throughout the course of the hearing of 20 minutes; however, no one on behalf of the landlord called into the hearing during this time. Based on this I find that the landlord has failed to present the merits of their application and their application is dismissed without leave to reapply.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*; served by registered mail on October 26, 2015. Canada Post tracking numbers were provided by the tenant in documentary evidence. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant's co- signatory (PI) gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order to recover the security deposit?
- Does the doubling penalty in relation to the return of the security damage apply in this case?

Background and Evidence

PI testified that this tenancy started on September 02, 2014 for a fixed term tenancy that was not due to end until August 31, 2015. The tenant gave notice and ended the tenancy on September 01, 2015. Rent for this unit was \$1,087.00 per month due on the 1st of each month. The tenant paid a security deposit of \$543.50 on October 01, 2014.

PI testified that her daughter, who has special needs, occupied the rental unit and PI was the co-signer of the tenancy agreement. PI testified that she also lives in the same building two doors down from her daughter. Her daughter had a nurse that came into her unit each day to work with her daughter and to clean the unit. PI testified that they gave the landlord her forwarding address in writing which was sent to the landlord on October 05, 2015 by registered mail. A copy of the receipt and tracking information from Canada Post has been provided in documentary evidence. PI testified that her daughter does not speak and PI never gave the landlord permission either verbally or in writing to keep all or part of the security deposit. The landlord has not returned the security deposit within 15 days of receiving the tenant's forwarding address in writing.

The tenant seeks to recover double the security deposit to an amount of \$1,087.00 plus the filing fee of \$50.00.

Analysis

I accept the undisputed evidence of the tenant's mother and co-signatory that the landlord was provided with a forwarding address in writing on October 05, 2015. As this was sent by registered mail it is deemed to have been served five days later on October 10, 2015 pursuant to s. 90(a) of the *Act*.

Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenant's forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and

does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

In this case, the landlord had until October 25, 2015, 2014 to make an Application to keep the tenant's security deposit. The landlord did make an Application on September 09, 2015, prior to receiving the tenant's forwarding address; however, in that application the landlord has only applied for a Monetary Order for damage and has not applied or an Order to be permitted to keep the security deposit. As a result, I find that the landlord has not made an application within the allowable time limits provided by the *Act*. Based on this, it is my finding that the doubling provision related to the tenant's security deposit applies. The tenant is entitled to recover double the security deposit to an amount of **\$1,087.00** pursuant to s. 38(6)(b) of the *Act*.

As the tenant's application has merit I find the tenant is also entitled to recover the filing fee of **\$50.00** pursuant to s. 72(1) of the *Act*.

Conclusion

For the reasons set out above, I grant the tenant a Monetary Order pursuant to Section 38(6)(b) of the *Act* in the amount of **\$1,137.00**. This Order must be served on the Respondent and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondent fails to comply with the Order.

The landlord failed to appear for the hearing. As a result, the landlord's application is dismissed **without** leave to re-apply.

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 14, 2016

Residential Tenancy Branch