



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. A monetary order in the sum of \$1200 for double the security deposit.
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was served by registered mail on the landlord. The representative of the landlord acknowledged service. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to the return of double the security deposit/pet deposit?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

At the end of June 2015 the parties entered into a written tenancy agreement that provided that the tenancy would start on August 1, 2015. The rent as \$1200 per month payable in advance on first day of each month. The tenant(s) paid a security deposit of \$600 on June 28, 2015.

The tenant testified there was a problem with the lack of storage space. On July 23, 2015 the tenant advised the landlord she was not moving into the rental unit. The landlord was not able to re-rent the rental unit for August 1, 2015. However, the landlord was able to re-rent it for August 1, 2015 at the reduced rent of \$1000 per month.

The tenant(s) provided the landlord with his/her their forwarding address in writing in a letter dated August 4, 2015 which was delivered by mailing, by registered mail on August 28, 2015.

Law

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

The representative of the landlord refers to the rental Application as evidence of an agreement in writing. That includes a clause which provides that if the premises are not occupied by the agreed date, the deposit will be forfeited. It further provides that the tenant would give 30 days notice if accepted before vacating and that the tenant is responsible for the month's rent if the premises are not occupied on the agreed. Date.

Section 38 of the Residential Tenancy Act includes the following:

38(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.

Policy Guideline #17 includes the following:

2. The tenancy agreement must not provide that the landlord automatically keeps all or part of the security deposit at the end of the tenancy⁴.

5. The tenant may agree in writing at the end of the tenancy that the landlord may retain all or part of the security deposit⁷.

11. If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit¹². Where the landlord has to pay double the security deposit to the tenant, interest is calculated only on the original security deposit amount before any deductions and is not doubled.

Analysis

The tenants paid a security deposit of \$600 on June 28, 2015. I determined the tenancy ended on August 1, 2015 when the tenants failed to take possession.. I further determined the tenants provided the landlord with their forwarding address in writing on August 28, 2015.

I do not accept the submission of the representative of the landlord that the tenant is not entitled to her claim because the parties have agreed in writing that the landlord can keep the security deposit. The Residential Tenancy Act and the Policy Guideline provides that for such an agreement to be binding it must be made after the end of the tenancy. The document relied by the landlord was signed a month before the start of the tenancy.

I determined the parties do not have an enforceable agreement in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenants and the landlord failed to file an Application for Dispute Resolution within the 15 days from the later of the end of tenancy or the date the landlord receives

the tenants' forwarding address in writing. As a result I determined the tenant has established a claim against the landlord for double the security deposit in the sum of \$1200.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$1200 plus the sum of \$50 in respect of the filing fee for a total of \$1250.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

Conclusion:

In conclusion I ordered the landlord to pay to the tenant the sum of \$1200 plus \$50 for the cost of the filing fee for a total of \$1250.

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 18, 2016

Residential Tenancy Branch