



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant on September 15, 2016 for the return of the security deposit and to recover the filing fee from the Landlord. The Tenant and the Landlord appeared for the hearing and provided affirmed testimony. The Landlord confirmed receipt of the Tenant’s Application by registered mail and both parties also confirmed receipt of each other’s evidence served prior to the hearing.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence on the issue to be decided, make submissions to me, and cross examine the other party on that evidence. While I have carefully considered the evidence in this case, I have only documented that evidence which I relied upon to making findings in this decision.

Issue to be Decided

Is the Tenant entitled to the return of her security deposit?

Background and Evidence

The parties agreed that this tenancy started on August 1, 2014 for a fixed term tenancy due to expire on July 31, 2015. However, the tenancy was ended prematurely when the Tenant gave written notice to end the tenancy on June 1, 2015. Rent in the amount of \$1,295.00 was payable on the first day of each month. The Tenant paid the Landlord a security deposit of \$705.00 at the start of the tenancy which the Landlord still retains.

The Tenant testified that she provided the Landlord with a forwarding address on a written letter by mail in July 2015. The Tenant testified that she did not consent to the Landlord keeping her security deposit or making any deductions from it.

The Landlord testified that he had received the Tenant's forwarding address in writing by mail at some point in July 2015. However, he did not return it because the Tenant had broken the fixed term tenancy and had failed to complete cleaning of the rental unit. The Landlord stated that he had a potential monetary claim for these items against the Tenant.

The Landlord confirmed that he had not made an Application to keep the Tenant's security deposit after he had received the Tenant's forwarding address. The parties were offered an opportunity to reach mutual agreement to resolve this dispute but the discussions around this proved to be unsuccessful.

Analysis

The Act provides comprehensive provisions on dealing with a tenant's security deposit. Section 38(1) of the Act states that, within 15 days after the latter of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an Application to claim against it. Section 38(4) (a) of the Act provides that a landlord may make a deduction from a security deposit if the tenant consents to this in writing.

I accept the undisputed evidence that this tenancy ended on June 1, 2015 through the ending of the fixed term tenancy by the Tenant. I further accept that the Landlord received the Tenant's forwarding address in writing at some point in July 2015 and failed to deal with the Tenant's security deposit pursuant to Sections 38(1) and 38(4) (a) of the Act.

The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies. The security deposit was held in trust for the Tenant by the Landlord. At no time does a landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. If a landlord and a tenant are unable to agree to the repayment of it or to make deductions from it, the landlord must comply with Section 38(1) of the Act. It is not enough that a landlord feels they are entitled to keep it, based on unproven claims. A landlord may only keep a security deposit through the authority of the Act, such as an order from an Arbitrator, or with the written agreement of a tenant. Here the Landlord did not have any authority under the Act to keep the Tenant's security deposit.

Section 38(6) of the Act stipulates that if a landlord does not comply with Section 38(1) of the Act, the landlord must pay the tenant double the amount of the deposit. Based on

the foregoing, I find the Tenant is entitled to double the return of her security deposit in the amount of \$1,410.00.

As the Tenant has been successful in this matter, I also allow the Tenant to recover the \$50.00 filing fee pursuant to Section 72(1) of the Act. Therefore, the Tenant is issued with a Monetary Order for \$1,460.00. This order must be served on the Landlord. The Tenant may then file and enforce the order in the Provincial Court (Small Claims) as an order of that court if the Landlord fails to make payment. Copies of the order are attached to the Tenant's copy of this decision.

Conclusion

The Landlord has breached the Act by failing to deal properly with the Tenant's security deposit. Therefore, the Tenant is granted a Monetary Order of \$1,460.00 for double the amount back plus the filing fee.

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 22, 2016

Residential Tenancy Branch