



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with a Tenant's Application for Dispute Resolution, signed and dated by the Tenant on July 17, 2015 (the "Application"). It concerns the return of a security deposit.

The Tenant appeared at the hearing with her advocate and father, D.D. Both provided their solemn affirmation.

The Landlord named in the Application did not appear at the hearing. However, the Tenant provided convincing evidence that the Notice of a Dispute Resolution Proceeding (the "Notice") was served on the named Landlord by registered mail. The Tenant provided a Canada Post receipt and tracking number with her documentary evidence. In addition, oral testimony from D.D. confirmed the Notice was received by the named Landlord on September 28, 2015. Accordingly, on the basis of the testimony from the Tenant and D.D., and the documentary evidence, I find that the named Landlord was duly served with the Notice on September 28, 2015.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant commenced these proceedings against the named Landlord only, and not against the numbered company that appears on the Residential Tenancy Agreement (the "Agreement"), a copy of which is in evidence. However, I find the Landlord against whom this application is brought was at all material times a landlord within the meaning of section 1 of the *Residential Tenancy Act* (the "Act"). I have made no determination regarding the status of the numbered company.

Issue(s) to be Decided

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

Background and Evidence

This dispute involved a fixed-term tenancy that commenced on October 1, 2013 and ended on October 1, 2014. The Agreement, signed by the Tenant on September 28, 2013, established rent at \$800.00 per month, payable on the first day of each month. At least initially, rent was paid directly to the Landlord. The oral testimony of the Tenant, which I accept, confirmed a security deposit of \$400.00 was also paid directly to the Landlord on or about October 1, 2013. The Tenant vacated the rental unit on September 30, 2014.

Roughly three months after the tenancy ended, the Tenant mailed a letter, dated January 8, 2015, to the Landlord's address for service. In it, the Tenant provided a forwarding address and requested the return of the security deposit. The Tenant's evidence was that the Landlord did not respond to the January 8 letter.

The Tenant mailed a second letter, dated March 30, 2015, to the Landlord's address for service. In it, the Tenant again provided a forwarding address and asked the Landlord to return the security deposit. The Tenant's evidence was that the Landlord did not respond to the March 30 letter.

The Tenant mailed a third letter, dated May 20, 2015, to the Landlord's address for service. On this occasion, the Landlord responded to the Tenant with a handwritten note below the body of the letter. In it, the Landlord provided the name and telephone number of a third party, L.S., who was alleged to have become responsible for the return of the security deposit in March 2014. The Tenant's affirmed evidence was that L.S. was the Landlord's spouse. As directed, the Tenant contacted L.S. to enquire about the return of the security deposit and was advised to contact the Landlord.

The security deposit was not returned and the Tenant mailed a fourth letter, dated June 19, 2015, to the Landlord's address for service. Again, the Landlord responded with a handwritten note below the body of the letter again referring the Tenant to L.S.

Analysis

Based on the documentary evidence and the undisputed testimony of the Tenant, and on the balance of probabilities, I find the following:

Section 38(1) of the *Act* addresses repayment of security deposits. It stipulates that a landlord must, within 15 days of receiving the tenant's forwarding address in writing, repay any security deposit or make an application for dispute resolution.

The Tenant provided the Landlord with a forwarding address in writing on several occasions. The Landlord responded to two of the Tenant's letters in handwritten notes on the letters. I

have compared Landlord's writing and signature as they appear on the documents. I am satisfied that the Landlord was the author of the notes.

In light of the above, I find that the Landlord received the Tenant's forwarding address in writing but did not repay the damage deposit or commenced dispute resolution proceedings, as required by section 38(1) of the *Act*.

Further, I note that section 38(6) of the *Act* provides a mandatory award of double the amount of the security deposit when a landlord does not comply with section 38(1) of the *Act*.

Conclusion

The Tenant's application is successful. Accordingly, pursuant to section 38(6) of the *Act*, I have determined that the Tenant is entitled to a monetary order for \$800.00 and I so order.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is final and binding on the parties, except as otherwise provided under the *Act*, and 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: April 05, 2016

Residential Tenancy Branch