



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order for the return of double the security deposit, for compensation for loss under the *Act*, and for the recovery of the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The tenant denied having received the landlord's evidence that was before me. The landlord stated that he mailed the evidence to the tenant by regular mail and provided a statement from a witness who observed him depositing the package into the Canada Post mail box on April 20, 2016. Upon review of the evidence, it is primarily regarding the landlord's claim for damages. Since the tenant has not received it and since this is not the landlord's application, it was not used in the making of this decision.

Both parties gave affirmed testimony.

Issue to be Decided

Did the tenant provide the landlord with her forwarding address in writing? Did the landlord return the security deposit in a timely manner? Is the tenant entitled to the return of double the security deposit? Is the tenant entitled to compensation and to the recovery of the filing fee?

Background and Evidence

Both parties agreed to the following: The tenancy started on December 01, 2014 and ended on July 31, 2015. The monthly rent was \$1,975.00. Neither party filed a copy of the tenancy agreement. The landlord agreed that at the start of the tenancy the tenant paid a security deposit of \$987.50. On September 03, 2015, the tenant gave the landlord her forwarding address in writing in a letter sent by registered mail to the landlord.

The landlord agreed that he received the registered mail containing the tenant's forwarding address and stated that he mailed a cheque to the tenant in the amount of \$775.00 on September 06, 2015. The tenant stated that she received the cheque on September 07, 2015, but it was not in the amount that she was expecting.

The tenant stated that she had agreed to a deduction of \$150.00 for cleaning but the landlord made an additional deduction of \$62.50 without her consent. The landlord stated that the additional deduction was an error on his part and he only realized this when he was putting together his evidence for this hearing.

The tenant stated that soon after the tenancy ended on July 31, 2015, she made multiple calls and sent multiple text messages for the return of her deposit. She stated that she suffered a lot of anxiety and financial difficulty while she waited for the return of the deposit. The tenant is claiming \$500.00 as compensation for pain and suffering.

Analysis

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

In this case, the tenant sent the landlord her forwarding address by registered mail on September 03, 2015. I find that the landlord returned the security deposit by mailing a cheque to the tenant on September 06, 2015 which is within the legislated time frame of 15 days.

The tenant agreed to a deduction of \$150.00 for cleaning costs. However, the landlord made an additional deduction of \$62.50 without the consent of the tenant. Accordingly I find that the landlord failed to repay the balance of the security deposit owed to the tenant or make an application for dispute resolution to retain an additional portion of the deposit and is therefore liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security deposit.

The tenant is claiming compensation for the pain and suffering she endured for the month after the end of tenancy, as she made attempts to contact the landlord for the return of the deposit. However, since the tenant did not have evidence to prove that she had given the landlord her forwarding address in writing before September 03, 2015 and the landlord denied having received it prior to this date, the tenant is not entitled to compensation. The tenant could have sent the forwarding address by registered mail and would not have had to endure the delay or the allegedly hostile communication with the landlord.

Since the tenant has proven her case she is also entitled to the recovery of the filing fee of \$50.00.

Overall the tenant has established a claim of \$2,025.00. The tenant has already received \$775.00 and has agreed to a deduction of \$150.00 for the cost of cleaning. Accordingly, I grant the tenant an order under section 67 of the *Residential Tenancy Act*, for \$1,100.00 which represents double the security deposit plus the filing fee minus the portion already received by the tenant and the cost of cleaning. This order may be filed in the Small Claims Court and enforced as an order of that Court.

In regards to the landlord's claims relating to loss that he may have suffered, I am not able to hear or consider the landlord's claim during these proceedings as this hearing was convened solely to deal with the tenant's application. The landlord is at liberty to file her own application for damages against the tenant.

Conclusion

I grant the tenant a monetary order in the amount of **\$1,100.00**.

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: April 29, 2016

Residential Tenancy Branch