



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding INTERLUDE HOLIDAYS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, OLC

Introduction

On April 26, 2016, the Tenant applied for Dispute Resolution requesting that the Landlord return double the amount of the security deposit; that the Landlord comply with the Act; and for the recovery of the filing fee for the application.

The matter was set for a conference call hearing. Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

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

During the hearing the Landlord referred to the Occupancy Agreement (tenancy agreement) between the parties as the authority for him to withhold the security deposit for breakage and cleaning. The Landlord stated that the Tenant did not even live in the unit. The Landlord testified that he has been running this rental operation mostly as week to week rentals for 12 years without issue.

Section 4 of the *Act* states that the *Act* does not apply to living accommodation included with premises that are primarily occupied for business purposes or living accommodation occupied as vacation or travel accommodation.

The Tenant testified that the rental unit was rented for her husband and his crew to live in while they were working in the area. The tenancy agreement provided by the Tenant

does not indicate that this was a commercial tenancy occupied for a business purposes or that it was occupied as vacation or travel accommodation.

I find that this tenancy agreement falls within the jurisdiction of the *Act*, and pursuant to section 5 of the *Act* any attempt to avoid or contract out of the Act or the regulations is of no effect.

I find that the tenancy agreement permitted the Tenant to sublet the rental unit to her husband and crew.

Issues to be Decided

- Is the Tenant entitled to the return of double the amount of the security deposit?

Background and Evidence

Both parties testified that the tenancy began on January 31, 2016, as a fixed term tenancy until March 31, 2016.. Rent in the amount of \$1,500.00 is due on the last day of each month. The Tenant paid a security deposit of \$750.00 to the Landlord. A copy of the tenancy agreement was provided as evidence by the Tenant.

The Tenant testified that the Landlord failed to return the security deposit in accordance with the Act. The Tenant testified that she asked the Landlord to return the deposit and provided the Landlord her address by sending a letter on March 18, 2016, providing her forwarding address, and returning a key to the rental unit. The Tenant has provided documentary evidence of a copy of the letter sent to the Landlord providing the Tenant's address. The Tenant has also provided documentary evidence of an email exchange between the parties. The email dated April 6, 2016 from the Landlord states "*that envelope from you arrived last week. It was torn on the end and had no key in it. Must have been a victim of Canada post mail sorting system.*"

The Tenant testified that the Landlord failed to conduct a move in inspection and failed to conduct a move out inspection. The Tenant testified that she did not agree that the Landlord could keep the amount of the security deposit that he retained and that the Landlord failed to apply for dispute resolution requesting to keep the deposit in accordance with the legislation. The Tenant seeks the return of double the security deposit less the \$400.00 already received from the Landlord.

The Landlord testified that the Tenant left the rental unit dirty and that there was minor breakage in the unit. The Landlord believed that he could withhold the security deposit based on the tenancy agreement between the parties.

The Landlord testified that he received the Tenant's envelope but that there was a tear in the envelope and that the envelope was empty. The Landlord testified that the envelope had the Tenants mailing address on it.

Analysis

Based on the testimony of the parties and the evidence before me, and on a balance of probabilities I make the following findings:

The Landlord failed to conduct a move in and move out inspection of the rental unit as required by sections 23 and 35 of the *Act*. I find that the Landlord's right to claim against the security deposit for damage is extinguished due to non-compliance with section 23 and 35 of the *Act*.

The Tenant provided her forwarding address to the Landlord in the letter dated March 18, 2016. I find that the Landlord received the Tenant's forwarding address.

While I acknowledge that the Landlord, upon receiving the Tenant's written forwarding address, was not aware of the requirements regarding the return of the security deposit, he was required to make application to claim against it, or return the deposit in full, within 15 days as required by section 38(1) of the *Act*. The Landlord testified that he did not file an application to keep it. Therefore, according to Section 38 of the *Act*, I am required to double the amount of the deposit.

I find, pursuant to section 38(6) of the *Act*, the Landlord owes the Tenant double the security deposit in the amount of \$1,500.00. Since the parties testified that the Landlord already returned \$400.00 of the security deposit to the Tenant, I order the Landlord to pay the Tenant the amount of \$1,100.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

The Landlord is encouraged to familiarize himself with the Residential Tenancy Act should he enter into these type of tenancy agreements in the future.

Conclusion

The Tenant's application is successful. The Landlord did not return the security deposit and failed to apply for dispute resolution to keep it. The amount of the security deposit is doubled. I also order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

The Tenant is granted a monetary order in the amount of \$1,200.00.

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: July 19, 2016

Residential Tenancy Branch