



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on December 7, 2015. The Tenant filed seeking a Monetary Order for the return of double their security and pet deposits and to recover the cost of the filing fee for their application.

The hearing was conducted via teleconference and was attended by the Tenant. No one was in attendance on behalf of the Landlord. The Tenant provided affirmed testimony that the Landlord was served notice of this application and this hearing by registered mail on December 9, 2015.

Section 90(a) of the *Residential Tenancy Act* (the "Act") states that a document served by mail is deemed to have been received five days after it is mailed. A party cannot avoid service by failing or neglecting to pick up mail and this reason alone cannot form the basis for a review of this decision.

Based on the undisputed evidence of the Tenant, I find the Landlord was deemed served notice of this proceeding on December 14, 2015, pursuant to section 90 of the *Act*. Accordingly, I proceeded to hear the undisputed evidence of the Tenant, in absence of the Landlord.

Issue(s) to be Decided

Has the Tenant proven entitlement to a Monetary Order?

Background and Evidence

The undisputed evidence was the Tenant entered into a month to month tenancy agreement which began on July 1, 2014. Rent of \$1,100.00 was payable on or before the first of each month. On June 20, 2014 the Tenant paid \$550.00 as the security deposit plus \$550.00 as the pet deposit. Both parties were represented at the move in inspection and completed the Condition Inspection Report (CIR) form on July 1, 2014.

The Tenant testified the Landlord served her a piece of paper on April 2nd or 3rd, 2015 telling her that she had to move out of the rental unit by June 30, 2015. The Tenant stated she was told she had to move because the Landlord would be moving into the rental unit.

The Tenant vacated the rental unit June 30, 2015 as per the Landlord's notice. The Tenant testified she was not provided two dates and times from the Landlord to choose when the move out inspection would occur; nor was she served a Final Notice of Inspection. The Tenant stated the Landlord simply showed up at the rental unit around 12 noon on June 30, 2015 and was ordering the Tenant's movers to hurry up. The Landlord left the property shortly after that.

The Tenant asserted she informed the Landlord that she had been told by the Residential Tenancy Branch (RTB) that she did not have to be out of the unit until 1:00 p.m. She stated they were finished moving by 12:45 p.m. at which time she tried to contact the Landlord via telephone. The Tenant submitted the Landlord failed to answer her calls and did not return to the rental unit to conduct the inspection so she left.

The Tenant testified she left the rental unit keys on the stove with a note listing her forwarding address for the return of her deposits. She stated the Landlord told her straight out that she would not be returning any deposits to her. The Tenant requested that her forwarding address be listed on the front page of this Decision so there would be no doubt the Landlord had her address.

The Tenant argued she was served notice of the Landlord's application for Dispute Resolution at her new address sometime in July 2015. (The Landlord's application is referenced on the front page of this Decision). She said she attended that hearing and won that case because the Landlord did not appear. However, the Landlord still refused to return her deposits.

The Tenant submitted the Landlord has failed to return her security and pet deposits. As such, she is seeking the return of double her deposits.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 44(1)(a)(i) of the Act stipulates that a tenancy ends if a tenant gives notice to end the tenancy in accordance with section 45 or 44(1)(d) the tenancy ends when the tenant vacates or abandons the rental unit; whichever is the earlier of the two.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations

or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

In this case the tenancy ended June 30, 2015 and the Landlord was provided the Tenant's forwarding address the same date, June 30, 2015. As such, the Landlord was required to return the Tenants' security deposit in full or file for dispute resolution no later than July 15, 2015. The Landlord filed their application for Dispute Resolution on July 14, 2015 seeking to retain the security and pet deposit.

Residential Tenancy Policy Guideline 17 provides that an arbitrator will order the return of a security and/or pet deposit on a landlord's application to retain all or part of the security and/or pet deposit if the landlord's application is unsuccessful; unless the tenant's right to the return of the deposit has been extinguished under the *Act*. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

In this case, pursuant to section 62 (2) of the *Act*, I find the Landlord has not fully complied with section 38(1) of the *Act*. I make this finding in part as the Landlord did not attend the scheduled teleconference hearing to present the merits of her application; therefore, abandoning her application for Dispute Resolution. An abandoned application for Dispute Resolution does not fully meet the requirements of section 38(1); as the applicant does not complete the application process which is to attend the scheduled teleconference hearing and present the merits of their application.

As the Landlord abandoned her application, the application was dismissed by the Arbitrator who conducted the December 4, 2015 hearing. As such the Landlord had no legal right to retain the Tenant's security and pet deposits. Unfortunately, the Arbitrator who conducted the December 4, 2015 hearing neglected to issue the Tenant a Monetary Order for the return of her deposits, pursuant to Residential Tenancy Policy Guideline 17.

In addition, I find that by abandoning her application for Dispute Resolution, the Landlord has failed to comply with Section 38(1) of the *Act* and the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the security and pet deposits since June 20, 2014.

Based on the above, I find that the Tenant has succeeded in proving the merits of their application for Dispute Resolution and I award her double her security deposit (2 x \$550.00) plus double her pet deposit (2 x \$550.00) for a total award of **\$2,200.00**.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Tenant has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the Act.

The Landlord is hereby ordered to pay the Tenant the sum of **\$2,250.00** (\$2,200.00 + \$50.00) forthwith.

In the event the Landlord does not comply with the above Order, the Tenant has been issued a Monetary Order for **\$2,250.00**. This Order must be served upon the Landlord and may be enforced through Small Claims Court.

Conclusion

The Tenant has been successful with her application and was awarded monetary compensation in the amount of **\$2,250.00**.

This decision is final, legally binding, 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: July 06, 2016

Residential Tenancy Branch