



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD FF

Introduction

Both parties attended the hearing and the tenant provided evidence that they had served the landlord with the Application for Dispute Resolution and with their forwarding address by registered mail. The landlord agreed she had received them as stated. I find the documents were served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) An Order to return double the security deposit pursuant to Section 38; and
- b) To recover the filing fee for this application.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that they are entitled to the return of double the security deposit according to section 38 of the Act?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. The tenant said they had paid a security deposit of \$500 on October 24, 2009 and agreed to rent the unit for \$1000 a month. The tenant vacated the unit on July 29, 2015 and provided their forwarding address in writing on July 7, 2015. The tenants supplied a copy of the tenancy agreement with these terms signed by the landlord. The tenant's deposit has never been returned and they gave no permission to retain any of it.

The landlord said she retained the deposit for she could not remember receiving the security deposit and she asked the tenants to provide a cancelled cheque to show they had paid it. They said the signed tenancy agreement should have been sufficient to prove the deposit was paid as it states on it that it was. However, they did a bank search and did forward the landlord a copy of the cancelled cheque eventually.

The landlord said she never wanted to be in the rental business. The property was an older farmhouse and she thought the arrangement would be temporary. Her husband encouraged her to allow the tenants to rent it. They brought papers to her and she did not know what she was signing.

The landlords submitted photographs and invoices concerning damages to the property. She had not filed an Application to claim against the deposit and I advised her in the hearing how to do this within the two year time limit specified in the Act. I declined to hear the damage claim and the parties were not interested in settling the matter.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis:

Section 38 of the Act provides specific requirements for dealing with damage deposits. Although the landlord said she never intended to create a tenancy relationship, I find by entering into a tenancy agreement, signing it and collecting rent from the tenants, she entered into a tenancy relationship with the tenants. Whether or not it was her intent, I find as a fact she was a landlord and is presumed to know the provisions of the Act.

On preponderance of the relevant evidence for this matter;

Section 38(1) of the Act provides as follows (**emphasis mine**)

38(1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

38(1) (a) the date the tenancy ends, and

38(1) (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

38(1) (d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

I find the landlord failed to repay the security deposit, or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing on July 7, 2015 and is therefore liable under Section 38(6) which provides:

38(6) If a landlord does not comply with subsection (1), the landlord

- 38(6) (a) may not make a claim against the security deposit or any pet damage deposit, and
- 38(6) (b) **must** pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The landlord currently holds a security deposit of \$500.00 and was obligated under Section 38 to return this amount if they determined not to seek it's retention through Dispute Resolution within 15 days. The amount which is *doubled* is the original amount of the deposit. As a result I find the tenant has established an entitlement claim for \$1000.00 and is further entitled to recovery of the 100.00 filing fee for a total entitlement of **\$1100.00**.

The tenant claimed additional compensation of \$10.34 for costs of a registered letter. I find my jurisdiction to award costs for the process of the Application is limited by section 72 of the Act to the award of filing fees. I dismiss this portion of the tenants' claim.

Conclusion

The tenant's application is granted. **I grant** the tenant a Monetary Order under Section 67 of the Act for the sum of **\$1100.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

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: August 16, 2016

Residential Tenancy Branch