



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD OLC

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (the "Application") seeking remedy under the *Residential Tenancy Act* (the "*Act*"). The tenant applied for a monetary order for double the return of their security deposit under the *Act*, and for an order directing the landlord to comply to comply with the *Act*.

The tenant, legal counsel for the tenant (the "counsel"), an observing law student, a witness for the tenant, and an agent for the landlord (the "agent") appeared at the teleconference hearing. During the hearing the tenant, counsel and agent were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

The agent confirmed that the landlord had received the tenant's documentary evidence and had the opportunity to review that evidence prior to the hearing. The agent also confirmed that the landlord did not serve documentary evidence on the tenant in response to the tenant's Application.

Issues to be Decided

- Is the tenant entitled to a monetary order under the *Act* for double the return of the tenant's security deposit?
- Should the landlord be ordered to comply with the *Act*?

Background and Evidence

The parties agreed that a tenancy began on June 1, 2013 and ended on November 15, 2015. Monthly rent was \$800.00 per month and due on the first day of each month. The tenant paid a security deposit of \$400.00 at the start of the tenancy, which the landlord continues to hold.

The parties referred to a previous decision dated November 4, 2015 (the “previous decision”), the file number of which has been included on the cover page of this decision for ease of reference. In that previous decision, the parties agreed that the tenancy would end on November 15, 2015. In addition, in the same previous decision the landlord acknowledged that he received the forwarding address of the tenant as of November 4, 2015.

The parties agreed that the tenant has not signed over any portion of the security deposit to the landlord. The agent testified that the landlord has not filed an application claiming towards the tenant’s security deposit.

There is no dispute that the landlord has not returned the tenant’s security deposit as of the date of this hearing. There is no dispute that the tenancy ended on November 15, 2015.

The agent alleged that there was damage to the stove of the rental unit which is why the landlord withheld the tenant’s security deposit.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

There is no dispute that the tenancy ended on November 15, 2015 and that the landlord acknowledged the receipt of the tenant’s forwarding address in writing on November 4, 2015. The landlord has not returned the tenant’s security deposit even though #5 of the November 4, 2015 Decision reads:

“5. The parties the landlord will comply with the requirements of the *Act* for the disposition of the security deposit at the end of the tenancy.”

[reproduced as written]

Section 38 of the *Act* applies which states:

Return of security deposit and pet damage deposit

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

(a) the date the tenancy ends, and

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

the landlord must do one of the following:

(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;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

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

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

[my emphasis added]

The landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as an order from an Arbitrator or the written agreement of the tenant. In the matter before me, I find the landlord received the written forwarding address from the tenant as of November 4, 2015 as supported by the earlier Decision described above. Furthermore, the landlord did not file an application for dispute resolution claiming towards the tenant's security deposit and the landlord did not have any authority under the *Act* to keep any portion of the security deposit as the tenant did not authorize the landlord to retain any portion of their security deposit. As a result, I find the landlord breached section 38 of the *Act* and #5 of the settlement recorded by the arbitrator in the November 4, 2015 Decision. Therefore, I find the tenant is entitled to the return of double her original security deposit of \$400.00, which as accrued no interest since the start of the tenancy, for a total of **\$800.00**.

As the tenant's claim is successful, I grant the tenant a monetary order pursuant to section 67 of the *Act*, in the amount of **\$800.00**.

I ORDER the landlord to comply with section 38 of the *Act* in the future. Failure to do so could lead to a recommendation for an administrative penalty under the *Act* as I find the landlord has also breached #5 of the settlement recorded on November 4, 2015, the file number of which is included on the cover page of this Decision. The maximum penalty for an administrative penalty under section 94.2 of the *Act* is \$5,000.00 per day and may be imposed for each day the contravention or failure continues.

I will now address the agent's issue related to alleged damage to the stove by the tenant. Although I make no finding about whether damage did occur, the remedy under the *Act* for the landlord would be to file for a claim for damages under the *Act*, subject to the timelines provided under the *Act*.

Conclusion

The tenant's claim is fully successful. The landlord has breached section 38 of the *Act*.

The landlord has been ordered to comply with section 38 of the *Act* in the future. Failure to do so could lead to a recommendation for an administrative penalty under the *Act*.

The tenant has been granted a monetary order under section 67 in the amount of \$800.00. This order must be served on the landlord and 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, unless 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: August 10, 2016

Residential Tenancy Branch