



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, OLC, FF

Introduction

On April 28, 2016, the Tenant applied for dispute resolution seeking a monetary order for money owed or compensation for damage or loss under the Act, regulations, or tenancy agreement; for a monetary order for the return of a security deposit; for the Landlord to comply with the Act, regulations or tenancy agreement; and to recover the cost of the fee for the application.

The matter was scheduled 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.

Issues to be Decided

- Is the Tenant entitled to recover double the amount of the security deposit?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

Both parties testified that the tenancy began on April 1, 2015, as one year fixed term that was to continue thereafter as a month to month tenancy. Rent in the amount of \$2,200.00 was due on the first day of each month. A security deposit of \$1,100.00 was paid by the Tenant to the Landlord.

The Tenant testified that on March 31, 2016, the tenancy ended and she met with the Landlord's and conducted a condition inspection of the rental unit. She testified that the Landlords signed off on the inspection that there was no damage to the rental unit. The Tenant testified that the Landlord agreed to return the security deposit to her within 15 days, and that she provided the Landlord with her written forwarding address.

The Tenant testified that on April 15, 2016, the Landlord provided her a cheque in the amount of the \$1,100.00. The Tenant deposited the cheque and on April 21, 2016, she discovered that the cheque was not processed due to non-sufficient funds.

The Tenant testified that on April 21, 2016, she met with the Landlord who paid her \$1,100.00 in cash.

In reply, the Landlords testified that they agree with the testimony provided by the Tenant. The Landlords testified that they took action to return the security deposit by providing a cheque within 15 days, as required by the Act. The Landlords submit that they made a mistake by issuing a cheque on an old account. The Landlord's testified that the mistake was not deliberate and that they paid the Tenant immediately upon becoming aware of the problem with the cheque.

Residential Tenancy Guideline #17 Security Deposit and Set off states that if a Landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the Tenant's agreement to keep the deposit, the Landlord must pay the Tenant double the amount of the deposit.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Landlord did not repay the security deposit within 15 days after the end of the tenancy. When the Landlord received the Tenant's written forwarding address, the Landlord 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 cheque given to the Tenant on April 15, 2016, did not clear due to non-sufficient funds, and I find that the security deposit was not paid in full to the Tenant within 15 days after the end of the tenancy. 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.

Double the amount of the security deposit equals \$2,200.00. Since the Landlord already returned \$1,100.00 in cash to the Tenant on April 21, 2016, I find that the Landlord owes the Tenant the amount of \$1,100.00.

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

In total, I award the Tenant a monetary order in the amount of \$1,200.00. This amount is comprised of \$1,100.00 of the security deposit and \$100.00 that I awarded for the recovery of the filing fee.

Conclusion

The Tenant's application was successful. The Landlord must pay the Tenant double the security deposit. I grant the Tenant a monetary order in the amount of \$1,200.00. This order must be served on the Landlord and may be enforced in Provincial 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 29, 2016

Residential Tenancy Branch

