



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- authorization to obtain a return of all or a portion of the security deposit, including double the amount, pursuant to section 38;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

Issues

Is the tenant entitled to a return of all or a portion of the security deposit, including double the amount?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

A written tenancy agreement was entered into and signed by the parties on October 30, 2014. A copy of the written agreement was provided on file. The tenant was the sole tenant listed on the original tenancy agreement. The tenancy began on November 1, 2014 with a monthly rent of \$1150.00 payable on the 1st day of each month. The tenant paid a security deposit and pet deposit totalling \$1150.00 at the start of the tenancy which the landlord continues to hold.

The tenant is claiming double the security deposit arguing that the landlord failed to return the security deposit within 15 days of the end of the tenancy. The tenant

provided a written notice to end tenancy and a forwarding address to the landlord on September 17, 2015. The tenant vacated the rental unit on October 31, 2015, the effective date indicated in the notice to end tenancy.

The landlord acknowledged receiving the notice to end tenancy and forwarding address but argued that the tenant's roommate provided a written notice to cancel the notice to end tenancy and still continues to reside in the rental unit. The landlord did not enter into a new tenancy agreement with the roommate but rather just had the roommate sign the original tenancy agreement that was entered into with the tenant. The landlord argues it was up to the tenants to resolve the security deposit issue through mutual agreement.

Analysis

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. A landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

I find the tenant did provide a forwarding address in writing to the landlord and the tenancy with the tenant ended on October 31, 2015. The landlord entered into a new tenancy agreement with the roommate and was obligated to return the security deposit paid by the tenant. The tenant's security deposit was not refunded within 15 days as required by section 38 of the Act and the doubling provisions of section 38 therefore apply.

I allow the tenants claim for return of the security deposit and award an amount of \$2300.00, which is double the original security and pet deposit of \$1150.00.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application from the landlord for a total monetary award of \$2400.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order in the amount of \$2400.00. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: September 12, 2016

Residential Tenancy Branch