



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF, OLC

Introduction

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

- a monetary order for return of the security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72; and
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 62.

The tenant and landlords attended the hearing. At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

Both parties were given full opportunity to provide affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Preliminary Issue – Order of Compliance

As the tenancy is ended and as a landlord's compliance may only be sought in relation to an ongoing tenancy I dismiss this portion of the tenant's claim.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of the security deposit?

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

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on July 1, 2011 on a month-to-month basis. Rent in the amount of \$1,500.00 was payable on the first of each month. The parties agreed that an inspection report was not done at the start of tenancy. The tenant remitted a security deposit in the amount of \$750.00 at the start of the tenancy. The tenant vacated the rental unit on March 30, 2016.

The parties agreed that upon vacating the rental unit on March 30, 2016, the tenant provided the landlord with her forwarding address in writing. The landlord contended that the rental unit was left in disrepair and retained half the security deposit, mailing the remaining half to the tenant in late April. The tenant confirmed receipt of a cheque in the amount of \$375.00 from the landlord on April 27, 2016. The parties agreed that this \$375.00 cheque remains uncashed. The parties also agreed the tenant did not authorize the landlord verbally or in writing, to retain the security deposit.

Analysis

Section 38 of the *Act* establishes that a landlord has fifteen days from the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing to file an arbitration application claiming against the deposit, or return the deposit. The tenant may waive their right to the return of the security deposit through written authorization to the landlord. In the absence of written authorization from the tenant, the landlord must return the security deposit or file an application within fifteen days. Should the landlord fail to do this, the landlord must pay the tenant double the amount of the security deposit.

The landlord received the forwarding address on March 30, 2016. The landlord did not file an arbitration application to retain the deposit, the landlord did not return the full deposit and the landlord did not receive written authorization to retain it. Based on this, I find the tenant is entitled to double the value of her security deposit in the amount of \$1,500.00. In the event the tenant successfully negotiates the cheque already provided to her by the landlord the monetary award shall be reduced by \$375.00.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for the application.

Conclusion

The tenant's application for an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement is dismissed without leave to reapply.

I issue a monetary order in the tenant's favour in the amount of \$1,600.00 against the landlord. This award shall be reduced to \$1,225.00 in the event the tenant successfully negotiates the \$375.00 cheque already provided to her.

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 01, 2016

Residential Tenancy Branch