



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

On April 28, 2016, the Tenant submitted an Application for Dispute Resolution for the return of all or part of the pet damage deposit or security deposit, and to recover the filing fee for the Application.

The matter was scheduled for a teleconference call hearing. The Tenant attended the hearing; however, the Landlord did not. The Tenant provided solemnly affirmed testimony that she served the Landlord with Notice of the Hearing on May 6, 2016, by sending the Notice using Canada Post Registered Mail. The Tenant provided the Registered Mail tracking number and testified that she received confirmation that the Landlord's wife picked up the register mail. I am satisfied that the Landlord was duly served with the Notice of Hearing in accordance with section 90 of the Residential Tenancy Act (the Act).

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 the return of the security deposit?
- Should the amount of the security deposit be doubled?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

The Tenant testified that the tenancy commenced on July 1, 2015, as a one year fixed term tenancy. Rent in the amount of \$1,200.00 is due on the first day of each month. The Tenant testified that she paid the Landlord a security deposit of \$600.00.

The Tenant testified that she moved out of the rental unit on March 31, 2016. She submits that she did not enter into any agreement with the Landlord that he could keep any amount of her security deposit. She testified that the Landlord signed off on the move out inspection that the rental unit was clean but he stated that since the Tenant ended the lease early, the Landlord was not going to return the security deposit.

The Tenant testified that she provided the Landlord with her forwarding address on two different occasions. She testified she sent her forwarding address to the Landlord by email before she moved out, and again sent the Landlord a letter by regular mail containing her forwarding address after she moved out.

The Tenant testified that there have not been any previous hearings that entitled the Landlord to keep the security deposit.

The Tenant is seeking a monetary order against the Landlord in the amount of \$600.00, and to recover the cost of the filing fee.

Analysis

Section 38 (1) of the Act states that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must repay any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations, or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38 (6) of the Act states that 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.

Based on the evidence and testimony before me, I make the following findings:

The Landlord was served with Notice of the hearing and failed to attend. The Tenant did not agree that the Landlord could keep any amount from the security deposit. The Tenant notified the Landlord of her forwarding address before and after she moved out, and the Landlord did not repay the deposit or make Application for Dispute resolution to claim against it within 15 days pursuant to section 38(1) of the Act. Therefore, by operation of section 38(6) of the Act, the Landlord must pay the Tenant double the amount of the security deposit.

The Tenant paid the Landlord a \$600.00 security deposit at the start of the tenancy. The Landlord owes the Tenant the amount of \$1,200.00 which is double the amount of \$600.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to pay the Tenant the \$100.00 fee that the Tenant paid to make application for dispute resolution.

I grant the Tenant a monetary order in the amount of \$1,300.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Tenant's application is successful. The Tenant is granted a monetary order in the amount of \$1,300.00.

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