



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF, MT

Introduction

This hearing dealt with an application by the tenant for a monetary order for return of the double the security deposit paid to the landlord and for the return of the filing fee for the Application, under the Residential Tenancy Act (the “Act”).

Only the tenant appeared at the hearing. The tenant provided affirmed testimony and was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The tenant testified and supplied documentary evidence that she served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail, sent on April 19, 2016, and deemed received under the Act five days later. I find the landlords have been served in accordance with the Act. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Preliminary Issue

As part of the tenants application she “checked off” the box allowing a tenant more time to file an application to dispute a notice to end tenancy, however the tenant advised that she has already moved and this is no longer required; accordingly, I dismiss this portion of the tenants application.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background, Evidence

The tenant's undisputed testimony is as follows. The tenancy began on September 1, 2015 and ended on November 1, 2015. The tenant stated that she had signed a one year term with the landlords, but nine days after moving in, was served a 2 Month Notice to End Tenancy for Landlord's Use of Property. The tenant stated that she decided to move on and not challenge the notice. The tenants were obligated to pay \$1300.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$650.00 security deposit and \$100.00 pet deposit.

The tenant stated that she gave the female landlord her forwarding address in the presence of a witness on November 20, 2015. The tenant stated that the landlords cut off communication and have never given her a reason as to why the deposits weren't returned. The tenant stated that she did not authorize or agree to allow the landlords to withhold any portion of her deposits. The tenant seeks the return of double the deposits and the recovery of the filing fee.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the tenant, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my finding are set out below.

The tenant said she is applying for the return of double the security deposit as the landlord has not complied with the s. 38 of the *Residential Tenancy Act*.

Section 38 (1) says that 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.

And Section 38 (6) says 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 tenant's documentation and their undisputed testimony, I find that the landlord has breached Section 38 of the Act and that the tenant is entitled to the return of double the security and pet deposits for an amount of \$1500.00.

The tenant is also entitled to the recovery of the \$100.00 filing fee for this application.

Conclusion

The tenant has established a claim for \$1600.00. I grant the tenant an order under section 67 for the balance due of \$1600.00. This order may be filed in the Small Claims 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 28, 2016

Residential Tenancy Branch