



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ATIRA MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD

Introduction

The tenant applies to recover a security deposit.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Is the tenant entitled to recover her security deposit?

Background and Evidence

The rental unit is a bachelor suite in an apartment building.

The tenancy started in June 2012 and ended in May 2016. The monthly rent of \$375.00 was an adjusted rent based on the tenant's income.

There is a written tenancy agreement. Neither party submitted a copy of it for this hearing. The tenant says the tenancy agreement discloses that she paid a security deposit of \$379.00. The landlord says the agreement discloses a deposit of only \$359.00.

In August the tenant served the landlord with this application which, I find, provided the landlord with the tenant's forwarding address in writing.

The landlord contacted the tenant two days ago to inform her that she could come by and pick up her deposit cheque in the amount of \$359.00. The tenant has not done so.

Analysis

The landlord does not have either the tenant's written authorization or an arbitrator's order permitting it to retain any portion of the deposit money. The tenant is therefore entitled to its return.

The tenant has failed to prove the deposit was greater than the \$359.00 amount conceded by the landlord and I find that is the security deposit amount.

Section 38 of the *Residential Tenancy Act* (the "Act") provides that once a tenancy has ended and once the landlord has received the tenant's forwarding address in writing, the landlord has a fifteen day period to either repay the deposit money or make an application for dispute resolution to keep all or a portion of it. If the landlord fails to comply with s. 38, it may still make an application but, as a penalty for its lack of promptness, it must account to the tenant for double the deposit owed at the end of the tenancy.

The landlord has not complied with s. 38.

The tenant has not requested a doubling of the deposit money.

Residential Tenancy Policy Guideline 17, "Security Deposit and Set off [sic]" provides that an arbitrator is to award the doubling even when not claimed in a tenant's application, unless the tenant specifically declines it at the hearing.

The tenant chose not to decline the doubling.

In result, the tenant is entitled to an award of double the deposit: \$718.00.

The tenant's filing fee was waived.

Conclusion

The tenant's application is allowed. There will be a monetary order against the landlord in the amount of \$718.00

This decision was rendered orally at hearing and 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: October 20, 2016

Residential Tenancy Branch

