



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

On May 9, 2016, the Tenant submitted an Application for Dispute Resolution requesting a monetary order for the return of a security deposit. The matter was set for a conference call hearing.

The Tenant attended the hearing; however, the Landlord did not. The Tenant provided affirmed testimony that on May 13, 2016, she sent the Landlord the Notice of Hearing using Canada Post Registered Mail. The Tenant testified that the Landlord did not pick up the Registered Mail and it was returned to the Tenant as undelivered. The Tenant testified that she knows that the Landlord still resides at the dispute address because the Tenant's mother has walked by the dispute address and has recently seen the Landlord in the community. The Tenant provided the Registered Mail tracking number as proof of service. I find that pursuant to sections 89 and 90 of the Act, the Landlord is deemed to have received the Notice of Hearing on the fifth day after it was mailed.

At the start of the hearing I introduced myself to the Tenant. The hearing process was explained. The Tenant was provided with an opportunity to ask questions about the hearing process. The Tenant provided affirmed oral testimony.

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 double the security deposit?

Background and Evidence

The Tenant testified that the parties entered into a tenancy agreement on November 29, 2014. Rent in the amount of \$795.00 was payable on the last day of each month. The Tenant paid the Landlord a security deposit of \$400.00, and a pet deposit of \$400.00. The Tenant testified that she moved out of the rental unit on August 31, 2015.

The Tenant testified that the Landlord did not conduct a move in, or a move out, inspection at the start and end of the of the tenancy.

The Tenant testified that on July 15, 2016, she provided the Landlord with a letter providing a forwarding address and requesting the return of the security deposit and pet damage deposit. The Tenant testified that the Landlord returned the \$400.00 pet damage deposit but has failed to return the security deposit.

The Tenant testified that she called the Landlord by telephone and left a message providing her phone number and requested the Landlord call her back, but the Landlord never called her back.

The Tenant is requesting \$800.00 which is double the amount of the security deposit.

Analysis

Based on the evidence before me, the testimony of the Tenant, and on a balance of probabilities, I make the following findings:

Section 35 of the *Act* requires a Landlord and a Tenant at the start and end of a tenancy to inspect the condition of the rental unit. The Landlord must offer the Tenant two opportunities for the inspection. The Landlord must complete a condition inspection report in accordance with the regulations.

I find that the failed to conduct a move in and move out inspection. Accordingly, the Landlord's right to claim against the security deposit for damage is extinguished due to non-compliance with section 35 of the *Act*.

I accept the Tenant's affirmed testimony that the Tenant provided the Landlord with a forwarding address in writing on July 15, 2016. When the Landlord received the Tenant's written forwarding address, the Landlord was required to make application to claim against the deposit, or return the deposit, in full within 15 days after the date the tenancy ended as required by section 38(1) of the *Act*.

There is no evidence before me that the Landlord applied to keep the security deposit and the Tenant did not agree that the Landlord could keep it. Therefore, according to Section 38 of the *Act*, I am required to double the amount of the deposit. I find, pursuant to section 38(6) of the *Act*, the Landlord owes the Tenant double the security deposit in the amount of \$800.00.

I find that the Tenant has established a total monetary claim of \$800.00. I grant the Tenant a monetary order in the amount of \$800.00. This monetary 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 Landlord did not return the security deposit and failed to apply to keep the security deposit within 15 days from the end of the tenancy.

The Tenant is entitled to double the amount of the security deposit. I grant the Tenant a monetary order in the amount of \$800.00.

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: October 12, 2016

Residential Tenancy Branch