



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order for the return of double the security deposit and for the recovery of the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The tenant filed copies of tracking slips for two packages sent mail to the landlord by registered on February 01, 2016 and February 23, 2016. The tenant testified that the first package contained her forwarding address and a request for the return of the security deposit. The tenant testified that the second package contained the notice of hearing and her documentary evidence. The landlord acknowledged having received both packages but stated that the documentary evidence was not received.

Even though the tenant filed proof of service of the documents, I gave the landlord the benefit of the doubt and accepted that he had not received any documentary evidence from the tenant. Accordingly the documentary evidence of the tenant was not used in the making of this decision.

Issue to be Decided

Did the tenant provide the landlord with her forwarding address in writing? Did the landlord return the security deposit in a timely manner? Is the tenant entitled to the return of double the security deposit? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

Both parties agreed to the following: The tenant owned the rental property prior to August 27, 2015. On that date the property changed hands the new owner agreed to rent the home to the tenant who was the previous owner. Accordingly as of August 27, 2015, the tenant assumed tenancy in the rental unit.

The monthly rent was \$2,200.00. On August 16, 2015, the tenant paid a security deposit of \$1,100.00. The landlord acknowledged having received a security deposit in this amount. The tenancy ended on November 30, 2015. The tenant stated that on December 22, 2015, she provided her forwarding address to the landlord by email but did not hear back.

On February 01, 2016, the tenant sent a letter containing her forwarding address and a request to return the deposit, to the landlord, by registered mail. The landlord acknowledged having received the hand written note from the tenant. By February 23, 2016 the tenant had not heard back from the landlord and therefore filed this application...

The landlord stated that the reason for not returning the deposit was that the unit was left in a damaged and dirty condition and that the tenant had agreed to allow the landlord to retain the security deposit towards the cost of cleaning and repairs. The landlord stated that the tenant had provided him with permission to keep the deposit via text message. The tenant denied having given the landlord permission to keep the deposit. .

Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case the landlord stated that he had the consent of the tenant to retain the security deposit and the tenant denied having given the landlord permission to do so. In the absence of a document to support the landlord's testimony of having obtained written permission, I find that the landlord has not proven that he had the consent of the tenant to retain the deposit.

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

In this case, the tenant gave the landlord her forwarding address by registered mail on February 01, 2016 and the landlord is deemed to have received the address on February 06, 2016.

I find that the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of the receipt of the forwarding address and is therefore liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security deposit.

The landlord currently holds a security deposit of \$1,100.00. Accordingly, the landlord must return \$2,200.00 to the tenant. Since the tenant has proven her case she is also entitled to the recovery of the filing fee of \$100.00.

Overall the tenant has established a claim of \$2,300.00. Accordingly, I grant the tenant an order under section 67 of the *Residential Tenancy Act*, for this amount which represents double the security deposit plus the filing fee. This order may be filed in the Small Claims Court and enforced as an order of that Court.

In regards to the landlord's claims relating to loss that he may have suffered, I am not able to hear or consider the landlord's claim during these proceedings as this hearing was convened solely to deal with the tenant's application. The landlord is at liberty to file his own application for damages against the tenant.

Conclusion

I grant the tenant a monetary order in the amount of **\$2,300.00**.

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: October 06, 2016

Residential Tenancy Branch