



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant; the landlord and her agent.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for return of double the amount of the security deposit; bank charges for insufficient funds; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agreed the tenancy began in June 2015 as a 1 year fixed term tenancy for a monthly rent of \$2,400.00 due on the 1st of each month with a security deposit of \$1,200.00 paid. The parties agree the tenant vacated the rental unit on May 5, 2016.

The tenant submitted that she first provided her forwarding address by email on May 7, 2016 but that she had used the wrong address and so she re-sent the correct address and sent it by regular mail on May 9, 2016. The landlord acknowledged receipt of the forwarding address on May 14, 2016.

The landlord submitted that the tenant did not attend the move out inspection. The tenant stated that she did attend and that the landlord was present but the landlord's agent was not. She stated that the landlord got upset about 15 to 20 minutes into the inspection. The tenant testified that she texted the landlord's agent to tell her she was going to leave. The tenant left before the agent arrived. The landlord acknowledged that she was a few minutes late in arriving.

The tenant seeks insufficient funds charges she incurred when she paid her new security deposit to her new landlord because she had not received her deposit from this landlord.

Analysis

In regard to the tenant's claim for insufficient fund charges, I find the *Act* does not allow compensation for actions taken by the tenant in relation to another tenancy. I dismiss this portion of the tenant's claim.

Section 36(1) of the *Act* states that the right of a tenant to the return of the security deposit or pet damage deposit, or both, is extinguished if the landlord has complied with the requirements set out in Section 35 of the *Act* and Section 17 of the Regulation and the tenant has not participated in the inspection.

Section 35 of the *Act* requires that the landlord and tenant must complete an inspection of the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit or on another mutually agreed upon date. The landlord must offer the tenant at least 2 opportunities with the second offered time being offered in writing and in the approved form.

Based on the testimony of both parties, I am satisfied the parties agreed to a time to complete the move out inspection. I accept that the landlord's agent was late but that the landlord herself was present as was the tenant. As such, I find the tenant attending the move out condition inspection and as such, has not extinguished her right to claim the security deposit.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

As there is no evidence before me that the landlord has submitted an Application for Dispute Resolution seeking to claim against the security deposit and the landlord received the tenant's forwarding address in May 2016, I find the landlord has failed to comply with the requirements under Section 38(1) and the tenant is entitled to double the amount of the deposits, pursuant to Section 38(6) of the *Act*.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$2,500.00** comprised of \$2,400.00 double the amount of the security deposit and the \$100.00 fee paid by the tenant for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: December 13, 2016

Residential Tenancy Branch