



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT LIMITED PARTNERSHIP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDC MNSD OLC FF

Introduction:

Both parties made applications but only one tenant attended the hearing. She provided evidence of serving her application personally on September 1, 2016 and the landlord signing for receipt. In the letter at that time, she provided her forwarding address in writing. She said the landlord served their application on her by registered mail. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Section 67 for damages to the property;
- b) An Order to retain the security deposit pursuant to Section 38; and
- c) An order to recover the filing fee pursuant to Section 72.

The tenant applies pursuant to the Act for a return of twice the security deposit pursuant to section 38 and to recover the filing fee for this application.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that the tenant damaged the property, that it was beyond reasonable wear and tear and the amount it cost to fix the damage? If so, what is the amount of the compensation? Is the landlord entitled to recover filing fees also?

Is the tenant entitled to twice her security deposit refunded and to recover filing fees for the application?

Background and Evidence:

Only one tenant attended the hearing although the landlord made an application to be heard at the same time. The tenant was given opportunity to be heard, to present evidence and to make submissions. The tenancy commenced December 1, 2014 on a fixed term lease to November 30, 2015 and the tenants vacated on November 30, 2015.

Rent was \$985 a month and a security deposit and pet damage deposit totalling \$985 was paid. The landlord made an application and a hearing was scheduled in July 2016 but they failed to attend. The tenant attended that hearing also. The application was dismissed without leave to reapply. Nevertheless the landlord made this application to claim damages and again failed to attend. The tenant has no idea why they fail to attend the hearings.

The tenant said she gave her forwarding address by text to the landlord when they telephoned her for it. However, she provided her forwarding address in writing to the landlord on September 1, 2016 when she served them with her application for this hearing. She said she got a cheque for \$985 for the deposits on September 29, 2016 which was made out to her and her former room mate. She no longer is with that room mate so she said she has problems with cashing it and requests any monetary order be in her name as she brought the application.

She remembers the date she received the cheque for \$985 for it was about the time she received the landlord's application by registered mail. The receipt in the landlord's file shows the mail was registered on September 22, 2016 so it is likely she did not receive the cheque (or mail) until September 29, 2016. She requests double the security deposit refunded less the cheque she received.

In evidence is the letter with the tenant's new address signed by the manager who received it, copies of registered mail receipts, a receipt for \$985 security and pet damage deposit and a condition inspection report and invoices.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

On the tenant's application, the onus is on her to prove on the balance of probabilities that twice the security deposit should be refunded in accordance with section 38 of the Act. I find the evidence of the tenant credible that they paid \$985 security and pet damage deposits on November 14, 2014 and vacated on November 30, 2015. I find they gave no permission for the landlord to retain the deposit. I find the tenant provided evidence she gave her forwarding address in writing personally to the landlord on September 1, 2016. She said she had texted it previously to the landlord also. I find it probable that the landlord had received the forwarding address by text previously as the landlord filed an application to claim against the deposit to be heard in July, 2016. However, they did not attend that hearing to substantiate their claim and their application was dismissed without leave to reapply

I find the landlord refunded the tenant's deposits of \$985 sometime after September 22, 2016. Although the landlord filed two applications, they did not attend the first hearing in July 2016 and were not given leave to reapply. Therefore, I find the current application is of no effect. Furthermore, they did not attend this hearing either to support their application so their application is again dismissed without leave to reapply.

The *Residential Tenancy Act* provides:

Return of security deposit and pet damage deposit

38 (1) *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.

(6) 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.

In most situations, section 38(1) of the Act requires a landlord, within 15 days of the later of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an application to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the security deposit (section 38(6)).

I find although the tenants received the refund of the deposits on September 29, 2016, this was outside the 15 day limitation provided in section 38 of the Act. I find the tenant entitled to recover double the security deposit less the \$985 already refunded. Since the female tenant was the only applicant for the return of the deposits and she no longer has a relationship with the former co-tenant, I find it reasonable to award the monetary order in her name.

Conclusion:

I find the applicant tenant entitled to a monetary order as calculated below and to recover the filing fee for this application.

I dismiss the application of the landlord without leave to reapply and find they are not entitled to recover the filing fee.

| | |
|---|----------------|
| Deposits doubled (\$985x2) | 1970.00 |
| Filing fee | 100.00 |
| Less refund received late | -985.00 |
| Total Monetary Order to Applicant Tenant | 1085.00 |

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: December 08, 2016

Residential Tenancy Branch