



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This was a hearing with respect to the tenant's application for the return of her security deposit including double the amount. The hearing was conducted by conference call. The tenant attended with the named individual and the person named as landlord called in and participated in the hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for the return of her security deposit and if so, in what amount?

Is the tenant entitled to the return of double the amount of her security deposit?

Background and Evidence

The rental unit is an apartment in a senior citizens' housing facility. According to the provided tenancy agreement, the tenancy began December 1, 2015 on a month to month basis with rent in the amount of \$750.00 payable on the first of each month. The agreement recorded that the tenant paid a security deposit of \$250.00 on November 11, 2015 and a pet deposit of \$200.00 on December 1, 2015.

The tenant said that the tenancy ended and she moved out of the rental unit on July 29, 2016. The tenant said that the landlord failed to return her deposit and did not provide any statement to show why they were withholding any part of her deposit. The tenant said she gave the landlord a letter dated August 5, 2016 sent to a member of the board of the housing society that operates the rental property. The tenant submitted a copy of a 7 page handwritten letter dated August 5, 2016 and a copy of a second 8 page letter also dated August 5, 2016 sent to the board member and secretary, Mr. B. The tenant said the rental unit was inspected on July 29, 2016 when she took part in a "walk through" with the landlord, Mr. T.N. She said the unit was pronounced perfectly clean, but she was shocked when later the landlord accused her of leaving a mess, including feces on the toilet seat and in the toilet. In the letter the tenant made accusation that she had been abused and mistreated by the landlord. In her letters the tenant mentioned that she owed rent arrears for July for half the month in the amount of

\$250.00. She claimed to have given the landlord \$50.00 in cash for some unexplained reason and said that the landlord therefore had \$500.0 as a deposit, made up of a \$250.00 security deposit, a \$200 pet deposit and \$50.00 cash. She requested in one letter that the landlord reimburse her \$250.00, being the balance after deducting \$250.00 owed for July rent.

A further document submitted by the tenant was a copy of a handwritten letter addressed: "To Whom It May Concern". The letter stated that the author, A.S. loaned the tenant \$200.00 to be given to the landlord after the beginning of the tenancy. The writer said that when the tenant was in the process of moving out of the rental unit the tenant told her to request the landlord to refund the \$200.00 from the deposit money held by the landlord. The writer said that she spoke to the landlord on August 1, 2016 and was told that she would get no money from the landlord because the tenant paid only \$250.00 for July rent followed by a payment of \$50.00 for a total of \$300.00. The letter contained other statements concerning the landlord's perceived obligations to pay security deposit and pet deposit monies. The tenant submitted copies of receipts that she created and signed to document what she claimed were payments or arrangements to pay rent. The receipts were largely indecipherable.

The landlord Mr. T.N. testified that the tenant failed to pay the full rent that was due for July 2016. The landlord did not submit any documents or records in response to the tenant's claim. He testified that the tenant paid only part of July rent. It was unclear from his evidence what was paid. I heard from the landlord that the tenant paid the sum of \$250.00 and paid a further \$50.00, leaving \$450.00 unpaid for July, but no documents or receipts were provided by the landlord.

Analysis

The documents provided by the tenant contained confusing and contradictory statements. Much of what she wrote was illegible. The landlord did not provide any documentary evidence and his oral testimony was not particularly helpful. In one of the tenant's letters to the landlord she stated that the pet deposit and security deposit totals \$450.00. She claimed that on July 29th she gave \$50.00 cash out of her pension and said that the landlord was now holding \$500.00. She then stated that:

As discussed already with T (Manager) I owe for July rent arrears Half of the month \$250.00. Therefore to balance everything to (name of landlord members of the Board) what I owe please reimburse me \$250.00 out of the total \$500.00 held. (remainder of faxed document page cut off and unreadable)

Out of the confusing and contradictory facts presented, I accept the tenant's admission that she owes rent in the amount of \$250.00 which she agreed in writing should be deducted from her security deposit and pet deposit of \$450.00. There is no record of a \$50.00 cash payment and if there was such a payment it did not form part of the tenant's security deposit. After deducting the sum of \$250.00 agreed in writing by the

tenant to be owed to the landlord, there is a balance of \$200.00 that represents the deposit due to the tenant at the end of the tenancy.

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

The landlord was obliged to return that amount or to make an application for dispute resolution to claim the amount within 15 days after receiving the tenant's forwarding address. No application was made and no funds were returned. I find that the tenant is entitled to a monetary award in the amount of \$400.00, being double the amount of the acknowledged deposit at the end of the tenancy. I grant the tenant an order under section 67 in the said amount. This order may be registered in the Small Claims Court and enforced as an order of that court.

Conclusion

The tenant's application has been allowed in part and she has been granted a monetary order in the amount of \$400.00. No filing fees were paid and none have been awarded.

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 20, 2016

Residential Tenancy Branch