



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order to recover double the security and to recover the filing fee from the landlord for the cost of this application.

The tenant along with a co-tenant and the landlord attended the conference call hearing. The parties gave sworn testimony. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord confirmed receipt of the tenant's evidence. 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.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order to recover the security deposit?

Background and Evidence

The parties agreed that this tenancy started on September 15, 2011 for fixed term tenancy for a year, thereafter, reverting to a month to month tenancy. The tenancy ended on June 01, 2016. Rent for this unit at the end of the tenancy was \$2,125.00 per month due on the first day of each month in advance. The tenant paid a security deposit of \$975.00 on August 04, 2011. The parties were unsure if a move in condition

inspection report had been completed at the start of the tenancy and no copy of an inspection report has been provided in documentary evidence.

The tenant testified that the landlord failed to return the security deposit within 15 days of receiving the tenant's forwarding address in writing. The tenant testified that the forwarding address was provided to the landlord in his mail box on June 20, 2016. A copy of the letter has been provided by the tenant in documentary evidence. The tenant testified that the landlord was not given written permission to keep all or part of the security deposit.

The tenant testified that the landlord lived out of Provence and his parents acted as property managers for the duration of the tenancy. The property managers emailed the tenant and stated that the tenants were good tenants over the last five years and that they did not agree with the issues raised by the landlord in the final inspection and that they hoped to help the tenant resolve these issues. The tenant testified that he was not available to do the walk out inspection at the end of the tenancy; however, the other two tenants were available had the landlord arranged a time to meet them.

The landlord agreed that they did receive the tenant's forwarding address in writing on June 20, 2016. The landlord agreed the tenant has not provided written permission for the landlord to keep all or part of the security deposits and testified that they retained the deposits for damage to the unit and for a lack of maintenance in the yard.

Analysis

After careful consideration of the testimony and documentary evidence before me I find as follows:

Section 38(1) of the *Residential Tenancy Act (Act)* says that a landlord has 15 days from the end of the tenancy or from the date that the landlord receives the tenant's forwarding address in writing to either return the deposits to the tenant or to make a claim against them by applying for Dispute Resolution. If the landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of

the deposits then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the deposits to the tenant.

Therefore, based on the above and the evidence presented I find that the landlord did receive the tenant's forwarding address in writing on June 20, 2016. As a result, the landlord had until July 05, 2016 to return all of the security deposit or file a claim to keep it. As the landlord failed to do so, the tenant has established a claim to have the deposit doubled to an amount of **\$1,950.00**, pursuant to section 38(6)(b) of the *Act*. There has been no accrued interest on the deposits for the term of the tenancy.

As the tenant's application has merit, the tenant is also entitled to recover the **\$100.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$2,050.00**. The Order must be served on the Respondent. If the Respondent fails to comply with the Order, the Order is enforceable through the Provincial Court 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: January 11, 2017

Residential Tenancy Branch