



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- authorization to obtain a return of all or a portion of the security deposit, including double the amount, pursuant to section 38;
- a monetary order for compensation for damage or loss pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. The landlord did not attend this hearing, although I waited until 1:56 p.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 1:30 p.m. The tenant attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The tenant testified that on July 29, 2016, he sent a copy of the Application for Dispute Resolution and Notice of Hearing to the landlord by registered mail. A registered mail tracking number was provided in support of service. The registered mail was sent to the rental unit address. An alternative address for service was not provided by the landlord on the tenancy agreement.

Based on the above evidence, I am satisfied that the landlord was served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the landlord.

Issues

Is the tenant entitled to a return of all or a portion of the security deposit, including double the amount?

Is the tenant entitled to a monetary award for damage or loss?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenancy began on July 1, 2015 with a monthly rent of \$2100.00 payable on the 1st day of each month. The tenant paid a security deposit of \$1050.00 at the start of the tenancy which the landlord continues to hold. The tenancy was for a fixed term of two years ending June 30, 2017.

The tenant is claiming double the security deposit arguing that the landlord failed to return the security deposit within 15 days of the date the landlord received the tenants forwarding address in writing. The tenant provided a registered mail receipt and a letter dated July 3, 2016 as proof of service of a forwarding address.

The tenant is also claiming one month's rent and moving costs as the landlord ended the lease prior to the expiry of the fixed term tenancy. The tenant testified that the landlord did not provide any written notice to end the tenancy. Rather, the landlord orally informed the tenant that he was going to sell the house and the tenant agreed to vacate. The tenant alleges the landlord agreed to compensate him with one month's rent and pay moving costs for agreeing to end the tenancy.

Analysis

Section 38 of the 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. 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, pet deposit, or both, as applicable.

I find the tenant did provide a forwarding address in writing to the landlord. The tenant's security deposit was not refunded within 15 days as required by section 38 of the Act and the doubling provisions of section 38 therefore apply.

I allow the tenants claim for return of the security deposit and award an amount of \$2100.00, which is double the original security deposit of \$1050.00.

The tenant's claim for one month's rent and moving costs is dismissed as the tenant voluntarily vacated the rental unit. The landlord did not issue the tenant with a 2 Month

Notice to End Tenancy which triggers the requirement for one month's compensation. The tenant did not have to agree to vacate and could have disputed the 2 Month Notice had the landlord still attempted to end the fixed term tenancy.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application from the landlord for a total monetary award of \$2200.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order in the amount of \$2200.00. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: January 30, 2017

Residential Tenancy Branch