



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

The tenant applies for return of a security deposit and pet damage deposit totalling \$725.00. The landlord claims he did return it.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties and referred to in testimony was admitted as evidence during the hearing.

Issue(s) to be Decided

Has the tenant been repaid her deposit money?

Background and Evidence

The rental unit is the two bedroom upper portion of a duplex house.

The tenant started in 2013. The landlord at that time was a property manager named Mr. R.H. There is a written tenancy agreement according to the tenant, but she did not produce a copy.

The landlord purchased the home in May 2016. He says that the purchase completed on May 31, 2016 with possession on June 1. He acknowledges that the vendor accounted to him for \$725.00 of the tenant's deposit money.

The original landlord, the vendor, gave the tenant a two month Notice to End Tenancy based on the unconditional sale and on the fact that the purchaser, the landlord in this matter, had asked him in writing to give the Notice because he or a close family member intended to occupy the rental unit. That is a valid ground for the giving of a two month Notice under s. 49(5) of the *Residential Tenancy Act* (the "Act").

The Notice was given in May with an effective dated of July 31, 2016.

As she was entitled to do under s. 50 of the *Act*, the tenant gave her own notice to end the tenancy earlier. By letter dated June 1 she informed this landlord that she would end her tenancy and vacate the rental unit on June 10, 2016.

In the same letter, she provided her forwarding address and noted that "I am aware that I am to receive 1 month free rent or monies in lieu of rent on \$950. Therefore, I expect to receive \$625.00 at vacancy plus my security deposit."

Any tenant vacating a rental unit as the result of a two month Notice is, by s. 51(1) of the *Act*, entitled to receive the equivalent of one month's rent on the effective date of the landlord's Notice.

Additionally, where a tenant gives her own notice for an earlier time than the effective date in the landlord's Notice, she is obliged to pay the proportionate rent for the remainder of the Notice period on the date she gives her notice. The tenant did not pay that amount on that date in this case. However, she calculated the amount she owed for the ten days in June to be \$325.00 (it is actually \$316.67) and, by her letter, deducted it from the \$950.00 equivalent of one month's rent she was owed under s. 51(1), arriving at the \$625.00 figure in her June 1 letter.

The respondent became the owner and thus the landlord on May 31, 2016. On June 10 the parties met. The tenant returned the keys. The landlord gave her a cheque for \$625.00. The note on the cheque indicated it was for a damage deposit.

The landlord has not made any application to retain any portion of the deposit money. He says that the \$625.00 was the deposit money and that the old owner is responsible for the s. 51(1) payment of the equivalent of one month's rent.

Analysis

I find I must disagree with the landlord. The \$625.00 payment could not be for the deposit money because the deposit money was \$725.00 and the landlord had no authority, neither the tenant's written consent or an arbitrator's order, to return any less than \$725.00. I find that the \$625.00 paid to the tenant was the s. 51(1) payment less the rent she owed for June 1 to June 10, 2016.

I do not accept the landlord's position that the previous owner was responsible for payment of the s. 51(1) money. This landlord became this tenant's landlord when he became the owner on May 31, 2016. It was his responsibility to arrange landlord-tenant matters with the vendor. The s. 51(1) money technically became due on July 31, 2016, the effective date of the two month Notice and it would clearly have been this landlord's responsibility to pay it then had it not been paid earlier.

In result, the landlord owes the tenant the \$725.00 deposit money.

Section 38 of the *Act* provides that if a landlord fails to repay deposit money back to his tenant within fifteen days after the end of a tenancy and receipt of the tenant's forwarding address, the landlord must pay the tenant an amount double the amount of the deposit remaining at the end of the tenancy.

That is the case here. However, the tenant has not requested the doubling penalty. Residential Tenancy Policy Guideline 17 "Security Deposit and Set off [*sic*]" provides that the arbitrator is required to award the doubling in such a case unless the tenant specifically declines it. The question was put to the tenant at this hearing and she requested that the doubling apply.

In result the tenant is entitled to the amount of \$725.00 doubled to \$1450.00.

As the tenant has been successful I award her recover of the \$100.00 filing fee.

Conclusion

The tenant will have a monetary order against the landlord in the amount of \$1550.00.

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: January 31, 2017

Residential Tenancy Branch