



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, FF

Introduction

This is an application by the Tenant for a Monetary Order for return of double the security deposit, the filing fee for the claim.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on August 9, 2016, the Landlord did not appear. The Tenant provided in evidence a copy of the Canada post tracking number and receipt or mailing as evidence of service; I have provided the tracking number on the unpublished cover page of this my Decision.

Section 90 of the *Residential Tenancy Act* provides that a document served by registered mail are deemed to have been served five days later; as such, I find that on August 14, 2016 the Landlord was served in accordance with the Act.

The Tenant called into the hearing gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

1. Is the Tenant entitled to a Monetary Order for return of double the security deposit?
2. Is the Tenant entitled to recovery of her filing fee?

Background and Evidence

The Tenant testified that the tenancy began December 1, 2015 and that she paid a security deposit of \$400.00 at the time the tenancy began. The Tenant vacated the premises on May 1, 2016. She stated that the rental unit was a basement suite and as a result of the heavy rain the water seeped into the rental unit and caused flooding; she stated that the Landlord obtained a quote for repairs and informed the Tenant that the tenancy would have to end because she would need the unit vacant while she attended to the repairs.

The Tenant further testified that she left a letter for the Landlord at the rental unit with her forwarding address on the day she moved out as well as providing the Landlord with her forwarding address by email. The Tenant testified that the Landlord acknowledged receipt of the Tenant's forwarding address as she sent a letter to the Tenant at this address after the tenancy ended. The Tenant testified that she did not sign over any portion of the security deposit.

The Tenant further testified that the Landlord failed to conduct both the required Move In and Move Out Condition Inspection Reports.

Analysis

Section 38 of the *Residential Tenancy Act* deals with the return of security deposits and provides as follows:

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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) [*tenant fails to participate in start of tenancy inspection*] or 36 (1) [*tenant fails to participate in end of tenancy inspection*].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].

(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.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

I accept the Tenant's testimony that she did not agree in writing, that the Landlord could retain any portion of her security deposit.

There was also no evidence to show that the Landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit, plus interest.

By failing to perform incoming or outgoing condition inspection reports the Landlord has also extinguished her right to claim against the security deposit, pursuant to sections 24(2) and 36(2) of the *Act*.

By failing to return the security deposit or make an application for dispute resolution within 15 days of the receipt of the Tenant's forwarding address, the Landlord has breached section 38(1) of the *Act*.

Section 38(6) provides that if a Landlord does not comply with section 38(1), the Landlord must pay the Tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Conclusion

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenant the sum of **\$900.00**, comprised of double the security deposit (\$400.00) and the \$100.00 fee for filing this Application.

The Tenant is given a formal Monetary Order in the amount of **\$900.00** and the Landlord must be served with a copy of this Order as soon as possible. Should the Landlord fail to comply with this Order, the 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: February 02, 2017

Residential Tenancy Branch