Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   MNSD, FF

Introduction

On August 18, 2016, the Tenant submitted an Application for Dispute Resolution for the Landlord to return of all or part of the pet damage deposit or security deposit, and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. The Landlord testified that she received a copy of the Tenant's documentary evidence. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

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.

Issues to be Decided

- Is the Tenant entitled to the return of double the security deposit?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy commenced December 1, 2013, as a fixed term tenancy that continued as a month to month tenancy. Rent in the amount of $700.00. was due on the first day of each month. The Tenant paid the Landlord a security deposit of $350.00 and pet damage deposit of $350.00.

The parties testified that the tenancy ended when the Tenant moved out on July 31, 2016.

The Tenant testified that she provided the Landlord's agent with her forwarding address on July 31, 2016.

The Tenant testified that she agreed to let the Landlord retain $100.00 of the deposit for the cost of carpet cleaning. The Tenant testified that she declined an offer from the Landlord to return the deposits to her using e-transfer.

The Tenant testified that she received a cheque from the Landlord in the amount of $600.00 on August 19, 2016. The Tenant submitted that the Landlord did not return the deposits in accordance with the Act and requests that the amount of the deposits be doubled.

The Landlord acknowledged that the Tenant provided her forwarding address on July 31, 2016.

The Landlord testified that she offered to repay the deposits using e-transfer but the Tenant declined.

The Landlord testified that she attempted to repay the deposits to the Tenant within 15 days; however, she made a mistake with the Tenant's address on the envelope, and it was returned to the Landlord. The Landlord testified that she corrected the mistake and mailed the Tenant a cheque for $600.00 on August 15, 2016.

Analysis

Section 38 (1) of the Act states that within 15 days after the later of the date the tenancy ends, and the date the Landlord receives the Tenant's forwarding address in writing, the Landlord must repay any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations, or make an application for dispute resolution claiming against the security deposit or pet damage deposit. If a Landlord does not comply with subsection (1) the Landlord must pay the Tenant double the amount of the security deposit or pet deposit or both.

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off states:

> *If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.*

I find that the Tenant provided her forwarding address to the Landlord on January 31, 2016. The Landlord did not apply for dispute resolution within 15 days of receiving the Tenants forwarding address. I find that there was no agreement from the Tenant that the Landlords could retain the amount of $600.00 of the deposits.

While I find that the Landlord intended to return the deposits, and made an address error on the envelope, the Landlord failed to repay the deposits to the Tenant within 15 days.

Section 38 of the Act states the deposit must be repaid within 15 days, and I find that the Tenant did not receive the deposit until July 19, 2016. I find that the deposit was not repaid until July 19, 2016.

The Tenant was under no obligation to accept the repayment via e-transfer. I find that the Landlord breached section 38 of the Act. Pursuant to section 38(6) of the Act, the Landlord must pay the Tenant double the amount of the security deposit and pet damage deposit.

Since the Tenant agreed that the Landlord could keep $100.00 of the deposit, the Landlord was only required to return the remaining amount of $600.00. The $600.00 is doubled pursuant to section 38(6)(b) of the Act. The Landlord owes the Tenant $1,200.00.

The Tenant has already received a cheque from the Landlord in the amount of $600.00 and the Landlord testified that the cheque is still valid. The Landlord owes the Tenant an additional $600.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenant was successful with her application, I order the Landlord to repay the $100.00 fee that the Tenant paid to make application for dispute resolution.

I order the Landlord to pay the Tenant the amount of $700.00. I grant the Tenant a monetary order in the amount of $700.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Landlord failed to return the security deposit and pet damage deposit in accordance with section 38 of the Act.

I grant the Tenant a monetary order in the amount of $700.00 for the deposits and the cost of the filing fee for the hearing.

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 21, 2017

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Residential Tenancy Branch