



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

On November 16, 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.

The Matter was scheduled as a teleconference hearing. The Tenant appeared at the hearing; however, the Landlord did not. The Tenant provided affirmed testimony that she served the Landlord with the Notice of Hearing using Canada Post Registered Mail on February 23, 2017. The Tenant testified that the registered mail was returned to her on March 15, 2017, as unclaimed. The Tenant testified that she sent the registered mail to the address of the Landlord that the Landlord provided during the tenancy. The Tenant testified that she has driven by the Landlord's property and observed that the Landlord's vehicle is still parked in the driveway. I find that that the Notice of Hearing was served to the Landlord in accordance with sections 89 and 90 of the Act and the Notice of Hearing is deemed to have been received by the Landlord five days after it was mailed.

The Tenant provided affirmed testimony and was provided the opportunity to present her 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?

Background and Evidence

The Tenant testified that the tenancy commenced on February 1, 2012, and ended on September 30, 2016. Rent in the amount of \$1,250.00 was due on the first day of each month. The Tenant paid the Landlord a security deposit of \$625.00.

The Tenant testified that on October 1, 2016, she met the Landlord at the rental unit and the Landlord issued her a cheque in the full amount of the security deposit.

The Tenant testified that the Landlord did not conduct a move out inspection with her at the end of the tenancy.

The Tenant testified that on the next business day she attended a bank to cash the cheque, and was informed that the cheque had been cancelled by the Landlord. The Tenant testified that she went to the Landlord's residence to ask why the cheque was cancelled and the Landlord informed her that he cancelled the cheque because of damage to the rental unit.

The Tenant testified that she sent a letter to the Landlord in October 2016, providing her forwarding address and requesting the return of her security deposit. The Tenant also returned a set of keys to the rental unit.

The Tenant testified that the Landlord has failed to return the security deposit to her.

The Tenant testified that there was no agreement that the Landlord could retain any amount of the security deposit.

Analysis

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

The Landlord failed to apply for dispute resolution or return the security deposit within 15 days of receiving the Tenant's forwarding address.

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.

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 in October, 2016. There is no evidence before me that the Landlord applied for dispute resolution within 15 days of receiving the Tenant's forwarding address. I find that there was no agreement from the Tenant that the Landlord could retain the security deposit.

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.

I order the Landlord to pay the Tenant the amount of \$1,250.00. I grant the Tenant a monetary order in the amount of \$1,250.00. 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 to the Tenant in accordance with the legislation.

The Tenant is awarded double the amount of the security deposit. I grant the Tenant a monetary order in the amount of \$1,250.00.

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: March 17, 2017

Residential Tenancy Branch