



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by conference call in response to the Tenant's Application for Dispute Resolution (the "Application") filed on September 19, 2016 for the return of double his security deposit, and to recover the filing fee.

Both parties appeared for the hearing and provided affirmed testimony. The Landlord confirmed receipt of the Tenant's Application by registered mail on September 22, 2016. The hearing process was explained to the parties and no questions of the proceedings were asked.

Issue(s) to be Decided

Is the Tenant entitled to the return of double his security deposit?

Background and Evidence

The parties agreed that this oral tenancy started on March 1, 2016 on a month to month basis. The Tenant was required to pay rent of \$1,000.00 on the first day of each month. The Tenant testified that he paid \$1,000.00 as a security deposit to the Landlord at the start of the tenancy.

The Landlord acknowledged receipt of \$1,000.00 from the Tenant at the start of the tenancy as one payment but testified that \$500.00 was assigned as the security deposit and the other \$500.00 was for a furniture deposit which the Tenant was aware of. The Tenant disagreed with this stating that the Landlord took an excessive amount of money from him for the security deposit at the start of the tenancy which he was now aware of.

The parties agreed the Tenant vacated the rental unit on August 31, 2016. The Landlord acknowledged receipt of the Tenant's letter dated August 26, 2016 which he personally received from the Tenant on August 29, 2016. That letter provided for the Tenant's forwarding address.

The Landlord stated that he had kept \$603.00 from the Tenant's security deposit after the tenancy had ended and had returned the remaining balance to the Tenant's forwarding address by mail; however, this was returned to the Landlord and marked as unclaimed by the Tenant. The Landlord stated that he kept a portion of the Tenant's security deposit because the Tenant caused damaged to the rental unit.

The Tenant disputed this and now seeks to claim double the amount back of \$2,000.00. The Tenant confirmed that he had not provided any written consent for the Landlord to make deductions from his security deposit and did not want to waive his right to the doubling penalty provided for by the *Residential Tenancy Act* (the "Act").

Analysis

A security deposit can be requested by a landlord for any liability related to the tenancy. This includes damage to furniture. Section 19(1) of the Act states that a landlord may not accept more than half a month's rent as a security deposit. The Act and the *Residential Tenancy Regulation* does not allow a landlord to charge a tenant a furniture deposit. Section 5 of the Act does not allow a tenant or a landlord to contract outside of the Act either.

Therefore, I find the Landlord acted contrary to the Act in requesting a security deposit from the Tenant that went beyond the allowable amount, even though the Landlord purported it to be separate from the security deposit. This action was contrary to the Act. As a result, I find the security deposit paid in this tenancy was \$1,000.00 and the Landlord had an obligation to correctly deal with this in accordance with the provisions outlined in the Act.

The Act contains comprehensive provisions on dealing with a tenant's security deposit. Section 38(1) of the Act states that, within 15 days after the latter of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make a formal application to claim against it. Section 38(4) (a) of the Act provides that a landlord may make a deduction from a security deposit if the tenant consents to this in writing.

A landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies. A security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it. If a landlord and a tenant are unable to agree to the repayment of the security deposit or to deductions to be made from it, the landlord must file an application within 15 days of the end of the tenancy or receipt of the forwarding address, whichever is later.

It is not enough that a landlord feels they are entitled to keep the security deposit based on unproven claims. A landlord may only keep the security deposit through the authority of the Act, such as an order from an Arbitrator, or with the written agreement of the tenant.

I accept the undisputed evidence before me that the Landlord received the Tenant's forwarding address in writing on August 29, 2016 prior to the tenancy ending on August 31, 2016. Therefore, the Landlord would have had 15 days from August 31, 2016 onwards to deal properly with the Tenant's security deposit pursuant to the Act.

There is no evidence before me that the Landlord filed an application within 15 days of the ending of the tenancy or obtained written consent from the Tenant to keep his security deposit. The very fact that the Landlord made unilateral deductions from the security deposit is further evidence of noncompliance by the Landlord. Therefore, I am only able to find that the Landlord failed to comply with Sections 38(1) and 38(4) (a) of the Act.

Section 38(6) of the Act stipulates that if a landlord does not comply with Section 38(1) of the Act, the landlord must pay the tenant double the amount of the security deposit. Based on the foregoing, I find the Tenant is now entitled to double the return of his security deposit in the amount of \$2,000.00.

As the Tenant has been successful in this Application, pursuant to Section 72(1) of the Act, I also grant the Tenant the \$100.00 filing fee he paid to file the Application. Therefore, the total amount awarded to the Tenant is \$2,100.00.

The Tenant is issued with a Monetary Order for this amount which must be served on the Landlord. The Tenant may then enforce this order in the Small Claims Division of the Provincial Court as an order of that court if the Landlord fails to make payment. The Landlord may also be liable for any enforcement costs incurred by the Tenant if voluntary payment is not made. The Landlord provided his updated mailing address which is also recorded on the front page of this Decision. Copies of this order are attached to the Tenant's copy of this Decision.

Conclusion

The Landlord breached the Act by failing to deal properly with the Tenant's security deposit. Therefore, the Landlord is ordered to pay the Tenant double the amount of \$2,100.00, inclusive of the filing fee.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: March 21, 2017

Residential Tenancy Branch