



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Ascent Real Estate Management Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession and a monetary order for unpaid rent or utilities, an order permitting the landlord to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenant for the cost of the application.

The tenant attended the hearing with a witness, however, the line remained open while the phone system was monitored for in excess of 10 minutes and no one for the landlord attended the call. Therefore, I dismiss the landlord's application in its entirety without leave to reapply.

During the course of the hearing the tenant asked for double the return of the security deposit, and the hearing commenced in the absence of the landlord. The tenant gave affirmed testimony, but the tenant's witness did not testify.

All testimony, and the evidence provided by the landlord have been reviewed and are considered in this Decision.

Issue(s) to be Decided

Should the tenant be granted a monetary order as against the landlord for return of all or part or double the amount of the security deposit?

Background and Evidence

The tenant testified that this fixed term tenancy began on May 1, 2016 and expires on April 31, 2017, thereafter reverting to a month-to-month tenancy, however the tenant moved out of the rental unit prior to the expiry of the fixed term. Rent in the amount of \$1,200.00 per month was payable on the 1st day of each month. The rental unit is an apartment in an apartment complex, and a copy of the tenancy agreement has been provided by the landlord.

The tenant further testified that on April 19, 2016 the landlord collected a security deposit from the tenant in the amount of \$600.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The evidentiary material of the landlord also includes a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 30, 2016 and containing an effective date of vacancy of September 9, 2016 for unpaid rent in the amount of \$1,200.00 that was due on May 1, 2016. The tenant moved out of the rental unit on August 31, 2016.

On August 31, 2016 the tenant sent an email to the landlord with an attachment. The attachment is a letter directed to the landlord's agents which contains a forwarding address of the tenant. The string of emails and the attached letter have been provided as evidence for this hearing by the landlord. The string of emails shows that the tenant sent the email and attachment to a caretaker on August 31, 2016 who forwarded it to another agent of the landlord on September 1, 2016.

The tenant testified that he has not applied for dispute resolution claiming back the security deposit because the landlord served the tenant with the application and notice of this hearing and the tenant decided to wait for the hearing. The landlord has not returned any portion of the security deposit to the tenant, and the tenant seeks a monetary order for double the amount, or \$1,200.00.

Analysis

The *Residential Tenancy Act* states that a landlord must either return a security deposit in full to a tenant or apply for dispute resolution claiming against it within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. If the landlord does neither, the landlord must repay the tenant double the amount.

In this case, the landlord has provided a copy of the tenancy agreement showing that the landlord collected a \$600.00 security deposit from the tenant. The landlord has also provided evidence of having received the tenant's forwarding address in a letter attached to an email, and forwarded both the email and the attachment on September 1, 2016 to another agent of the landlord. I accept the undisputed testimony of the tenant that the landlord has not returned any portion of it, and the tenancy ended on August 31, 2016. I also find that the landlord received the tenant's forwarding address in writing on September 1, 2016, and filed the application for dispute resolution claiming against the security deposit on October 16, 2016, well beyond the 15 days permitted in the *Act*.

I refer to Residential Tenancy Policy Guideline #17 – Security Deposit and Set-Off, which states, in part (underlining added):

C. RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH DISPUTE RESOLUTION

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the *Act*, on:
 - ☐ a landlord's application to retain all or part of the security deposit; or
 - ☐ a tenant's application for the return of the deposit.unless the tenant's right to the return of the deposit has been extinguished under the *Act*¹⁴. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.
3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit¹⁵:
 - ☐ if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;
 - if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the *Act*¹⁶;
 - ☐ if the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the dispute resolution process;
 - ☐ if the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the *Act*;
 - ☐ whether or not the landlord may have a valid monetary claim.

Having dismissed the landlord's application, and considering the Policy Guideline above, I find it appropriate to order the landlord to return double the amount of the security deposit to the tenant.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,200.00.

This order is final and binding and may be enforced.

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: April 25, 2017

Residential Tenancy Branch