



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38; and
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement pursuant to section 62.

The tenant and the landlord's agent (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed she was an agent of the company named in this application, and had authority to speak on its behalf.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant authorized to obtain a return of all or a portion of the security deposit?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on August 1, 2014 on a fixed term until July 31, 2015 at which time the tenancy continued on a month-to-month basis. Rent in the amount of \$1,500.00 was payable on the first of each month. The tenant remitted a security deposit in the amount of \$750.00 and pet deposit in the amount of \$750.00 at the start of the tenancy. The tenant vacated the rental unit on February 28, 2017.

The parties agreed that condition inspection reports were conducted by the landlord and tenant at move-in and move-out. The landlord confirmed receipt of the tenant's written forwarding address on February 25, 2017. The landlord acknowledged that the tenant did not provide authorization for the landlord to retain the security deposit.

The tenant seeks double the value of her security and pet deposit for the landlord's failure to return them within 15 days of receipt of her forwarding address. The landlord contends that as agent of the owner, she collected the deposits at the start of the tenancy and remitted them to the owner, who still retains them. The landlord testified that she has attempted to retrieve the deposits from the owner to return to the tenant but has been unsuccessful. The landlord testified that she does not have the deposits or the funds to pay the tenant.

Analysis

Section 1 of the *Act* defines landlord, in relation to a rental unit, to include any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord ,
 - (i) permits occupation of the rental unit under a tenancy agreement ,or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

From this provision, it is clear that the definition of landlord is inclusive. Based on the landlord's admission that she acted as agent of the owner of the rental unit in which she permitted occupancy, collected deposits and conducted condition inspection reports, I find for the purposes of this tenancy, the agent is a "landlord" pursuant to the *Act*.

Section 38 of the *Act* establishes that a landlord has fifteen days from the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing to file an arbitration application claiming against the deposit, or return the deposit. The tenant may waive their right to the return of the security and pet deposit through written authorization to the landlord. In the absence of written authorization

from the tenant, the landlord must return the security and pet deposit or file an application within fifteen days. Should the landlord fail to do this, the landlord must pay the tenant double the amount of the security and pet deposit.

The landlord received the forwarding address on February 25, 2017. The landlord did not file an arbitration application to retain the deposit, the landlord did not return the full deposit and the landlord did not receive written authorization to retain it. Based on this, I find the tenant is entitled to double the value of her security and pet deposit in the amount of \$3,000.00.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$3,000.00 against the landlord.

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 28, 2017

Residential Tenancy Branch